

No. 9.

Mandate.

Filed March 9, 1915

Court of Appeals of Maryland.

January Term, 1915.

Henry L. Brack, and Emma Brack,  
his wife,

vs.

The Mayor and City Council of  
Baltimore.

Judge Urner delivered the opinion of the Court.

This is a condemnation proceeding for the acquisition by the City of Baltimore of certain land of the appellant, in Baltimore County, included in the area required for the storage and protection of a new water supply for the City to be impounded by an extensive dam in the valley of the Gunpowder River. The tract condemned contains about forty-four acres. It embraces the middle portion of the appellants farm of one hundred and ninety acres, and lies along a stream called Peterson's Run, which, for the greater part of its course through the farm, will be absorbed in the waters of the reservoir. By the appropriation of ground in this proceeding the remainder of the appellant's land will be divided into two disconnected tracts of approximately equal acreage. The buildings are located at the eastern end of the farm, and an outlet is provided by a roadway extending through the property to a public thoroughfare beyond its western limits. This private way crosses Peterson's Run by a bridge not far below the point where the stream enters the farm, but the land taken by the City will be necessarily flooded to such an extent as to prevent the use of the roadway and bridge at their present level. The condemnation of the intersecting tract, which is proposed by the petition to be acquired in fee simple, would also in itself have debarred the landowner from the use of the customary outlet, but it was provided by an amendment to the petition that the property required should be condemned subject to the obligation upon the part of the Mayor and City Council of Baltimore to construct a suitable bridge over Peterson's Run, and a suitable road from each side of the bridge to the outlines of the property sought to be condemned, along the



line of the present way, the new road and bridge to be equally as good as those now existing, and to be at a sufficient elevation to furnish a safe and solid roadway connecting the separated portions of the farm, and to be for the perpetual use and benefit of the owners of the remaining land, by whom, however, it was to be maintained. By the same amendment it was further stipulated that the condemnation should be subject to the reservation, in behalf of the landowner, his heirs or assigns, of the right of access to the Run above the roadway for all domestic purposes, including the cutting of ice and the right to have live stock, except hogs, run to and water in that portion of the stream.

The petition was thus amended, by leave of the Court, after the jury had been impaneled and had viewed the premises. Objection to the ~~amendment~~ amendment was taken by a motion ne recipiatur, which was overruled; and a formal exception to this action was reserved and constitutes the first bill of exceptions in the record. The appellant complains of the modification referred to mainly on the ground that it is inconsistent with a condemnation in fee simple, to which the proceedings are in terms directed, and seeks to accomplish by the provisions stated the partial satisfaction of damages which are claimed to be legally demandable as a whole in money. Other exceptions were reserved to the refusal of the Court below to allow the defendant to show that the land being condemned has special features which give it an independent value as a reservoir site. The appeal by which the questions we have indicated are brought before us for determination has been taken by the defendant from a judgment, entered upon the inquisition as returned by the jury awarding him damages to the amount of \$15,967.00.

In the argument of the case in this Court the subject first considered was the ~~property~~ propriety of the exclusion of evidence as to the adaptability of the land for reservoir purposes, and we will adopt the same order of discussion.

The just compensation to which the landowner is entitled, where part of his land is taken for public use, includes the value of the ground condemned and a due allowance for consequential damages, if



any, to the remainder. *Patterson vs. Baltimore*, 124 Md. 153; *Baltimore vs. Megary*, 122 Md. 20; *Baltimore vs. Garrett*, 120 Md. 608; *Ridgely vs. Baltimore*, 119 Md. 567. With respect to the property taken the award must be based upon its actual market value at the time of the condemnation. *Norris vs. Baltimore*, 44 Md. 607; *Moale vs. Baltimore*, 5 Md. 314; *Tide Water Canal Co. vs. Archer*, 9 G. & J. 479. The rule is that the market value of the land is to be estimated in reference to the uses and purposes to which it is adapted, and that any special feature which may enhance its marketability may properly be considered. But the fact that the land is needed for the particular object sought by the condemnation is not to be regarded as an element of the value to be ascertained. The question is not what the property is worth to the condemning party, but what could probably be realized from its sale to any purchaser who might desire it for any or all of the purposes for which it is available.

In 15 GYC 757, it is said: "The true rule is that any use for which the property is capable may be considered, and if the land has an adaptability for the purposes for which it is taken, the owner may have ~~it~~ this considered in the estimate as well as any other use ~~x~~ for which it is capable. Thus, in proceedings to condemn land for railroad purposes, for a bridge site, or for a reservoir or water supply, it may be shown that the land has an especial availability which would render it valuable to any one who might wish to purchase it for railroad purposes, for a bridge site, or for the ~~purchase~~ purpose of a reservoir or water supply, and the owner may insist upon this availability of his land for the particular purpose as an element in estimating its value."

In *Mississippi & Rum River Boom Co. vs. Patterson*, 98 U. S. 403, where three islands in the Mississippi River were being condemned for use in the construction of a boom, and the owner desired to have their special availability for such use considered in the estimate of his damages, it is said: "In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties."



The inquiry in such cases must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses."

It was held in *Sargent vs. Merrimac*, 196 Mass. 171, where a landowner was seeking compensation for property taken as a source of municipal water supply, that: "The market value to which the petitioner was entitled was made up of the value of the land apart from its special adaptability for water supply purposes, plus such sum as a purchaser would have added to that value because of the chance that the land in question might be some day used as a water supply." The decision in *Moulton vs. Newburyport Water Co.*; *vs.* 137 Mass. 163, was to the same general effect.

In *Spring Valley Waterworks vs. Drinkhouse*, 92 Cal. 528, it was held to be proper to show that land which was being condemned for a reservoir site was so situated as to be peculiarly adapted to such use. The same theory was adopted in the case of *Alloway vs. Nashville*, 88 Tenn. 510, 8 L.R.A. 123, where land was condemned for a reservoir, and it was said that the market value to which the owner was entitled "includes every element of usefulness and advantage in the property. If it be useful for agriculture or for residence purposes; if it has adaptability for a reservoir site, or for the operation of machinery; if it contains a quarry of stone, or a mine of precious metals; if it possesses advantage of location, or availability for any useful purpose whatever, all these belong to the owner, and are to be considered in estimating its value. It matters not that the owner uses the property for the least valuable of all the ends to which it is adapted, or that he puts it to no profitable use at all. All its capabilities are his, and must be taken into the estimate."

An opinion delivered by Lord Justice Alverstone, in *re Gough and Aspatria, Silloth and District Joint Water Board* (1904) 1 K.B. 422, approves as correct the following statement of Wright, J., whose action was under review: "If there is a site which has pe-



culiar advantages for the supply of water to a particular valley or a particular area of any other kind, or to all valleys or areas within a certain distance, if those valleys are what might be called natural customers for water by reason of their populousness and of their situation,- if the site has peculiar advantages for supplying in that sense - apart from value created or enhanced by any Act of Parliament of scheme for appropriating the water to a particular local authority, I think it may be taken that there is a natural value in the site for the purposes of water supply, and that it should be taken into consideration."

The case of *Brown vs. Forest Water Co.*, 213 Pa. St. 440, also recognized the rule that the special availability of land for reservoir or water supply purposes is a proper element of value to be proven. It was said in the opinion: "The defendant cannot properly complain of the admission of evidence that the property taken by it was adapted to reservoir purposes, from the natural formation of the land, the amount of water flowing over it, and its proximity to certain towns. All these matters were elements entering into the market value of the property."

The general principle of the above citations is applied in numerous cases collected in *Lewis on Eminent Domain*, 3 Ed. Sec. 707, and in notes to decisions reported in 15 L.R.A., N.S., 679; 11 L.R.A., N.S., 996; 3 L.R.A., N.S., 912; and 24 Amer. & Eng. Annotated Cases, 1236.

In the case of *Callaway vs. Hubner*, 99 Md. 529, this Court, in passing upon exceptions to the ratification of a sale of land reported by trustees, and in determining whether the sale was improvident, had occasion to consider the availability of the property for reservoir purposes as entering into the market value, and as affecting the question as to the propriety of the sale, which had left that element out of view. The opinion by Judge Pearde cited and quoted from the decisions in *Matter of Furman Street*, 17 Wendell, 669; *Young vs. Harrison*, 17 Ga. 30, and *Boom Co. vs. Patterson*, 98 U.S., supra, in support of the proposition that the availability of property for particular uses should be taken into consideration when its value is being estimated. It was accordingly



decided that the value of the land as a reservoir site should have been considered by the trustees, and that as they sold the property in disregard of the special advantage which it thus possessed, and at a much lower price than might otherwise probably have been obtained, the sale could not be approved. It was remarked that the trustees had made no effort to sell the land to the City of Baltimore, although they knew it as was in the market for a reservoir site in that locality, and disposed of the property as if it were ordinary unimproved ground. In this connection it was said, in the language of the lower Court, which was quoted with approval: "Had the City proceeded by condemnation, (as it might have done), the peculiar value of this land as a reservoir site would have been a fact to be considered by the jury in assessing its value."

The case of McGovern vs. New York, 130 App. Div. 350; 195 N.Y. 573; 229 U.S. 363, is cited as tending to support an opposite theory. But an examination of the decision rendered in that case, by the Courts of New York and by the Supreme Court of the United States, has satisfied us that they are not opposed to the general trend of authority on the subject under inquiry. In the opinion delivered by the Appellate Division of the Supreme Court of New York it was said that the landowner, whose property was being taken as part of the site of the Ashokan Reservoir for New York City, was entitled to receive its market value for any purpose to which it was adapted. The principle was distinctly recognized that when land is shown to have a market value for some particular use, its adaptability to that use can be taken into account in the estimate of the compensation to be awarded. In that case the landowner did not attempt to prove that the value of the property had been increased by its availability for reservoir purposes before the commencement of the condemnation proceedings. It was pointed out that there was no evidence "of any circumstance by which the value of the parcel in question, as a part of a natural reservoir site, could be estimated or determined." In the absence of such evidence it was held that the owner had received the benefit of everything which enhanced the value of his property except the increase



caused by its appropriation for the use of the City. The action of the Appellate Division in sustaining the award was affirmed by the Court of Appeals of New York without the delivery of an opinion. The case was then appealed to the Supreme Court of the United States upon the question as to whether the ruling on the measure of compensation amounted to a taking of property without due process of law. This question was answered by the Supreme Court in the negative, and Mr. Justice Holmes, who delivered the opinion, observed: "The enhanced value of the land as part of the Ashokan Reservoir depends upon the whole land necessary being devoted to that use. There are said to have been hundreds of titles to different parcels of that land. If the parcels were not brought together by a taking under eminent domain, the chance of their being united by agreement or purchase in such a way as to be available well might be regarded as to remote and speculative to have any legitimate effect upon the valuation."

It is apparent, therefore, that the case last cited is consistent with the theory of the other decisions referred to, that any particular capability which actually enhances the value of the property independently of the demand created by the condemnation, should be considered in the estimate to be made of the market value which constitutes the measure of compensation. In the case now before us the defendant offered ~~in~~ to prove the existence of such a condition with reference to the land involved in this proceeding. It was testified by the Sanitary Engineer ~~in~~ of the State Board of Health that he had examined the defendant's property in respect to its contour and drainage, and it was then proposed to prove by the witness that by reason of the topographical features of the ground a storage reservoir could readily be constructed there with a capacity of 1,200,000,000 gallons, that there was a market at that time for such a reservoir, ~~that~~ the site will be destroyed by the taking of the property sought to be condemned, and that the land has an independent value as a reservoir site. The reason for the exclusion of the evidence thus proffered is not indicated in the record, but the argument against its admission was that the land in question could not have any value as a reservoir site, apart from the object of the present condemnation, because its owner



would have no right to impound and distribute the waters of the stream flowing through it without the consent of the City of Baltimore as the lower riparian proprietor, and that as the City needs the stream as a source of supply for its people, the storage of the water for the use of other consumers would be legally impracticable. In order to sustain this contention we should have to hold in effect that the evidence offered to be introduced, though theoretically admissible under the rule we have discussed, must nevertheless be excluded in this instance on the ground that the special element of value to which it refers could not possibly have any existence in fact and is therefore incapable of being proven. The record, however, does not justify such a conclusion. It affords us no sufficient reason for making a formal and final declaration that the defendant's land cannot conceivably have any peculiar availability for the purposes of a reservoir in view of the acquisition by the City of the rights of a lower riparian owner. It would not seem reasonable to hold that land situated on a water-course can under no conditions have any inherent value as a reservoir site unless it is held under a common ownership with all the other properties through which the further course of the stream extends. If it affirmatively appeared that the use of the tract in question for such a purpose would necessarily have involved an invasion of the riparian rights of the City, which it has held for many years, there could be no difficulty in eliminating the element of reservoir value from further consideration. But the proffer is distinctly made to prove that the land has an independent availability for such use, and the record does not conclusively show that competent evidence to that effect could not be adduced. If we were to preclude the inquiry which the defendant proposes on that subject, we could not be certain, as in the case is now presented, that his rights were receiving the full measure of recognition to which they may be justly entitled. In our opinion the defendant should have the opportunity ~~has~~ he desires to prove, if he can, that the property being condemned has an independent value and marketability as a reservoir site. If testimony had been allowed to be introduced for that purpose, and had appeared to be merely speculative or otherwise legally insufficient to support the theory



upon which it was admitted, it could have been stricken out or withdrawn from the consideration of the jury by suitable instructions. As Chief Justice Rugg said in *Smith vs Commonwealth*, 210 Mass. 259, where a somewhat similar question was under discussion: "witnesses and jurors should not be permitted to enter the realm of speculation and swell damages beyond a present cash value under fair conditions of sale by fantastic visions as to future exigencies of growing communities." But we cannot determine in advance that the evidence here proffered would be too inconclusive to be considered, and we are, therefore, unable to concur in the ruling by which the offer was unconditionally refused.

The other question to be considered relates to the amendment of the condemnation proceedings by the provision we have noted reserving to the landowner, and his successors in title, a right of access to the waters of Peterson's Run at the place and for the purposes a stated, and imposing upon the condemning agency the duty of elevating and reconstructing the road and bridge ~~xxxx~~ upon which the eastern portion of the land is dependent for an outlet to the public highway, and reserving to the present and future owners of the property a perpetual right to the use of the way thus preserved. It was, of course, the object of these stipulations to mitigate the damages occasioned to the defendant's remaining land by the appropriation of the part required for the purposes of the condemnation. The property taken was condemned in fee simple, and it will be flooded to such an extent as to require, as already ~~said~~ stated, the raising of the road and bridge if they are to be further utilized. The effect of the amendment in this regard is not to reserve from the condemnation an existing and available roadway over the land, but to provide a new way upon a higher level in lieu of the one which the waters of the reservoir will render impassable. Such a substitution, according to the terms of the amendment, involves the construction of the new roadway and bridge by the City and their future maintenance by the owner of the land to which the way is intended to be appurtenant.

As the condemnation of a part of the defendant's land entitles him, in addition to the value of the property taken, to compensation for any injury to the value of the remainder resulting from the use of



the condemned portion for the purposes of its acquisition, the question we are now to decide is whether the consequential damages thus accruing to the defendant can be partially satisfied by the reservation of the rights and the creation of the obligations specified in the amendment.

In *Pennsylvania R. R. Co. vs. Reichert*, 58 Md. 261, where the question before the Court grew out of the fact that part of a lot of ground owned and occupied by a coal dealer had been condemned for a railroad right of way, and the inquisition as returned required the condemning company to erect for the lot owner a trestle, to be used for moving coal, in place of one which would be removed in the building of the railroad, and imposed other conditions, it was said by Chief Judge Bartol to be a correct statement of the law, as quoted from *Mills on Eminent Domain*, Sec. 112, that: "Compensation is ordinarily to be made in money, yet reservations of rights to owners are favored, and the condemning party may ratify an award a part of which requires certain improvements to be made for the benefit of the owner. The reservation of rights to the owner is only carrying out the spirit of the law, that the public improvement shall be made with the least damage to private individuals. These conditions and reservations cannot be fixed against the will of the parties." This quotation was partially repeated in the case of *Russell vs Zimmerman*, 121 Md. 339.

In 15 CYC 898 it is said to be "the duty of the jury or commissioners to award compensation to the property owner in money, and they cannot in lieu thereof impose conditions upon the party condemning the property, or require the property-owner to accept certain privileges." The rule is stated to the same effect in *Lewis on Eminent Domain*, 3 Ed. Sec. 756, and has been applied in *Chicago, M. & St. P. R. Co. vs. Melville*, 66 Ill. 329; *Central & Ohio R. R. Co. vs. Holler*, 7 Ohio 220; *Chesapeake & Ohio R. Co., vs. Halstead*, 7 W. Va. 301; *Hill vs Mohawk & Hudson R. R. Co.*, 7 N. Y. 152; *Chicago & N. W. R. R. Co. vs McGrew*, 104 Mo. 282.

In a case like the present where part of the farm on which the buildings are located is apparently dependent for an outlet upon the



roadway over the portion of the land which is being condemned, it seems entirely reasonable that the way should be preserved, if possible, in order to promote the convenience of the landowner and to reduce the extent of the consequential injury to the property. But as the defendant is objecting to the provisions which seek to accomplish that result, and as he is entitled to assume such a position by virtue of the rule stated in the decisions of this and other Courts, we are unable to sustain the injunction in its present form. Upon the remanding of the case it may be practicable to restrict the interest or area to be acquired, or modify the terms of the condemnation, so as to avoid the difficulty now presented. The brief of the appellee suggests that the objection could be obviated, and there is ample authority to permit an amendment for that purpose. Code Art. 33A. Sec.4.

The reservation of an unrestricted right to the present and succeeding owners of the land not condemned to have their cattle resort to the waters of Peterson's Run need not be separately discussed, but it may be observed that the propriety of this provision may be open to question when applied to a municipal water supply, and the right would at all events be precarious in view of the power vested in the State Board of Health, by Chapter 810 of the Acts of 1914, to prevent the pollution of the waters of the State in so far as may be necessary for the protection of the public health or comfort.

It is urged on behalf of the City that the objection we have considered, as to the reservation and conditions created by the amendment to the petition, was not raised ~~for review~~ in the Court below and is therefore not a proper subject for review on appeal. The motion ne recipiatur denied the right of the City to modify the petition by inserting the stipulations in question, and the reasons assigned were that the proposed amendment was too vague and uncertain, that it was inconsistent with the petition as filed, that it was offered too late, and that it was not germane to the issue upon which the jury had been sworn. The objections thus interposed were sufficiently comprehensive to entitle the defendant to have this Court pass upon the question here presented.



The further contention is made that the damages assessed by the jury afford the defendant more than adequate compensation upon any of the theories advanced, and that he has consequently not been injured by the rulings as to which he objects. There is the usual wide ~~spread~~ diversity of opinion in the testimony contained in the record as to the proper amount of damages to be awarded the defendant, but some of the estimates exceed the sum ascertained by the verdict, and we are not at liberty to rule as a matter of law, upon the evidence before us, that the allowance made by the jury was so obviously excessive from any point of view, as to render non-prejudicial the rulings we have under consideration.

There is an exception in the record which relates to the instructions granted at the instance of the City, but the questions ~~as~~ thus raised are answered in effect by the views we have already expressed.

Judgment reversed with costs  
and cause remanded.

Filed February 17th 1915.



# COURT OF APPEALS OF MARYLAND

January Term, 191

Henry L. Drack and  
Emma Drack, his wife.

Appeal from the Circuit Court for  
Baltimore County.

vs  
Mayor and City Council of  
Baltimore, a corporation

1915 February 17<sup>th</sup> Judgment  
Reversed with costs and cause remanded.  
Opinion filed.

Op. Unrev. J.  
To be reported.

## Appellant's Cost in the Court of Appeals of Maryland,

Record, . . . . . \$56.25

Brief, . . . . . 40.00

Appearance Fee, . . . 10.00

Clerk, . . . . . 8.35

\$114.60

## Appellee's Costs in the Court of Appeals of Maryland,

Brief, . . . . . \$

Appearance Fee, . . . 10.00

Clerk, . . . . . 75

\$10.75

## STATE OF MARYLAND, Sct:

I, C. C. Magruder, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk, and affixed the seal

of the Court of Appeals, this Eight

day of March A. D., 1915,



C. C. Magruder, Clerk  
of the Court of Appeals of Maryland.



In the Circuit Court for Baltimore County.  
At Law.

Mayor and City Council of Baltimore,

vs.

Henry L. Brack and  
Emma Brack, his wife.

PETITION and ORDER.

Mr. Clerk:-

Please file.

*E. S. Clark*

City Solicitor,  
Attorney for Petitioner.

Service of copy admitted this  
day of July, 1915.

Wiles West & Boston Thomas

City and County of Baltimore

Filed July 3rd 1915



Mayor and City Council of  
Baltimore,

vs.

Henry L. Brack and  
Emma Brack, his wife.

: In the Circuit Court for Bal-  
:  
: timore County.

:  
:  
: At Law.

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TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of the Mayor and City Council of Baltimore respectfully represents to the Court:

That it heretofore filed its Petition asking leave to amend the original Petition filed in this case, and an Order Nisi was passed on the said Petition asking leave to amend, and the defendants have filed an Answer objecting to the leave being granted, and that it is important to have the matter passed upon at an early day.

Your Petitioner, therefore, moves the Court to set the application for leave to amend down for a hearing at an early day.

Respectfully,

  
City Solicitor,  
Attorney for Petitioner.

*this first day of July 1915*

UPON the foregoing Motion, it is ORDERED by the Circuit Court for Baltimore County, At Law, that the application for leave to amend in the above entitled case be, and it is hereby set for hearing on the 12<sup>th</sup> day of July, 1915, provided a copy of this Motion and Order be served upon the counsel for the defendants on or before the 3<sup>rd</sup> day of July, 1915.



Mayor and City Council  
of Baltimore,

versus

Brack.

In the Circuit Court  
for Baltimore County,  
in Law.

\* \* \* \* \*

The defendant in this case moves for a new trial, and  
assigns for said motion the following reasons:

1. Because the verdict was against the evidence.
2. Because the verdict was against the weight of the  
evidence.
3. Because the verdict is against the instructions of  
the Court.
4. Because the damages awarded are inadequate.

5. For other reasons to be assigned at the hearing.

William J. Ogden  
Charles Harton  
Arford S. King

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Attorneys for Defendant.



In the  
Circuit Court for  
Harrison County  
M. T. C. vs. J. B. Jackson  
vs.  
J. B. Jackson  
motion removed

Motion for Rehearing

Per. Clerk

These files  
have been  
sent to Jackson  
County for  
re-hearing  
as per J. B. Jackson  
vs. J. B. Jackson

Filed Oct 21 1915

IN THE CIRCUIT COURT FOR  
BALTIMORE  
COUNTY.

MAYOR AND CITY

COUNCIL,

A MUNICIPAL CORPORATION

vs.

HENRY L. BRACK,

et al.

0-0-0-0

ORDER FOR APPEARANCE.

Mr. Clerk:

Please file.

*Wm. Wolff Barton Pinneroid*

Attys. for Defdt.

NILES, WOLFF, BARTON & MORROW

ATTORNEYS AT LAW,  
BALTIMORE, MD.

*Filed June 18, 1914*



MAYOR AND CITY COUNCIL,  
A MUNICIPAL CORPORATION

VS.

HENRY L. BRACK, et al.

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IN THE

CIRCUIT COURT

FOR BALTIMORE COUNTY.

MR. CLERK:

Enter our appearance for the Defendant in the above  
cause.

Wills Wolff Rafterman

Attorneys for Defendant.

In the Circuit Court  
for  
Baltimore County.

Mayor and City Council  
of Baltimore,

vs.

Henry L. Brack  
and wife.

Bills of Exceptions.

*W. Clark*

*Received for re -  
Prof. J. H. Jones  
76 East Street  
Baltimore, Md. & servants*

OGDEN & OGDEN  
ATTORNEYS-AT-LAW  
723 GAITHER BUILDING  
BALTIMORE, MD.

*Filed Nov 16. 1914*



Bills of Exceptions.

Mayor and City Council	)	In the Circuit Court
of Baltimore	)	for
vs.	)	Baltimore County.
Henry L. Brack and wife	)	

The Jury was sworn and taken to view the premises. After the Jury had returned from its visit to the premises, the second day, September 29, 1914, Mr. Field, City Solicitor, representing the petitioner, offered an amendment to the petition by adding Paragraph 3-1/2.

Here insert Paragraph 3-1/2:

Mr. Offutt objected to the amendment offered. Objection overruled, exception noted.

To which action and ruling of the Court in permitting said amendment to the petitioner's bill the defendant then and there excepted and prayed the Court to sign and seal this his first bill of exceptions, which is accordingly done this *16<sup>th</sup>* day of *Nov*, 1914.

*James G. Downey* (SEAL)

After the proceedings were had and the evidence taken as set forth in the defendant's first bill of exception, which is made a part hereof, the petitioner offered evidence by duly qualified witnesses tending to prove as follows:

The following witnesses testified as to the value of the property and the damages to the remaining property after the portion taken by condemnation had been separated from it: Alfred D. Bernard, a witness of lawful age, called on behalf of the petitioner after being duly sworn testified that he had been a member of the Bar for twenty-five years, dealing in real estate

in and around Baltimore City and suburbs for twenty-eight years; that he was familiar with the property and of the sales of property within five miles of this property for the last five years, and mentioned the sale of the Cowan property of 462-1/2 acres; <sup>at \$90.00 per acre and</sup> the Grafe property 120 acres for \$13,000.

Question by Mr. Field: Now under the amended petition the City is seeking to get 43.9, we will call it 44 acres for short as shown within the yellow lines on this plat, subject to a reservation in favor of Mr. Brack, his heirs and assigns, of the right to use the water between the road and the Hampton estate line, subject to the right of reservation of the use of the road, and the obligation on the part of the City to elevate the road and make it as good as it is now, will you tell his Honor and the gentlemen of the jury what is a fair market value of the 44 acres of land that is proposed to be taken?

A. I figure it as 43.9, \$2853.50, which is 43.9 acres at \$65., to that I added the tenant house of \$830. making the total of the land and the improvements \$3683.50. In my judgment, the taking of this area will have the effect of dividing the Brack place into two parts, one of which will be the high hill which slopes to the West and is improved with very handsome improvements, a very elaborate dwelling house, and the usual farm buildings; the balance which I figure is 75 acres lying between the land taken and the Delany's Valley Turnpike, will be what we call unimproved land, in the sense that it has no farm buildings on it; it is not improved, but it is utilized as farm land, but has no farm buildings on it, and in my judgment, the 75 acres lying between the area taken and the Dulany's Valley Road would be graded as unimproved property and would not have as high a selling price per acre as it would in connection with the improved property. To illustrate, that the farm buildings on the Brack place are ample for the 178 acres. Now if these



improvements which I designated as improved property lying to the east of the area taken, then the area to the west is the vacant property and I figure the damage to the property at \$20. per acre or \$1500., from which, added to my \$3683.50, would give me a total value of the land taken and damage to the rest of the tract of \$5183.50. The highest utility of that 44 acres, by itself would be in my judgment converted to dairy or grazing purposes. There would be enough high land in the area for farm buildings but it would not make an ordinary farm in the sense that we rotate crops in this section of the country. If you owned that 44 acres alone, you would have to confine your operations to a grazing or dairy farm. *The Brack Place* It has a potential country residence value which I think would be augmented if it had transportations. The reasons it has not progressed more in that line - because it is beautiful land out there, is on account of lack of transportation, and the tendency for country seat in other sections. ~~X~~

*Barbican*  
behalf of the petitioner, testified that he is a member of the  
at Towson for twenty-five years, had considerable dealing  
in real estate, and was well acquainted with the value of the property  
at Glen Ridge, and was familiar with the value of the properties  
For country residence purposes, the value *able* portion of the farm is the high land, which is not taken. The 44 acres which are taken would practically have no value for country residence, or development purposes. It is only for farm or grazing purposes that the taking of the 44 acres damages the rest of the farm.

property, 132 acres for \$13,000; there was a house, welling  
and a farm and the necessary outbuildings; that the Paterson  
property is within five miles of the Brack property, the Pat-  
erson property was sold to Mr. Yellott for \$80. an acre and af-  
ter that he sold it for *\$82.50* ~~\$2.50~~; the Powell sale 85 acres  
\$5700. Question by Mr. Field: I will ask you the question  
I asked you a while ago, what in your judgment is a fair market

value of the 43 and a fraction acres which are sought to be taken under these proceedings? A. \$90. per acre. Q. Upon what do you base that value? A. I base my answer on my knowledge of farming land and the prices that the various properties sold for in the last five years in a radius of five miles. I put the value of \$25. per acre as the damages to the balance of the property, 190 acres I made the calculation. The total value of the 44 acres at \$90. per acre is equal to \$3960, taking 44 acres from 190 leaves a balance of 146 acres at \$25 per acre is \$3650; these two added together make a grand total of \$7610. <sup>Question by Mr. Offutt:</sup> Q. Now you were asked by Mr. Field to put an estimate on the damage done by taking of that tract of Mr. Brack's, in connection with that property, you were asked to consider a reservation that the City made, what consideration did you give to that reservation, to what extent did it affect your estimate of the damages to the rest of the property? A. That reservation? Q. Yes. A. Well, it is rather an advantage to have that privilege which can be used in connection with both parts of the property, but to figure it out in dollars and cents, I can't do that, it is guesswork to some extent. Q. Did you have in mind at the time you were considering it, the provision of Chapter 810 of the Act of 1914 which put it in the power of the State Board of Health to pass on that reservation?

To which question the petitioner objected and the Court sustained the objection.

To which action and ruling of the Court the defendant then and there excepted and prayed the Court to sign and seal this his second bill of exceptions, which is accordingly done this

16<sup>th</sup> day of November 1914.

Frank J. Dineen (SEAL)

And after having offered the testimony set forth in the preceding bills of exceptions, each and all of which are



made a part of this one, the petitioner offered evidence tending to prove as follows:

W. O. B. Wright, a witness of lawful age, called on behalf of the petitioner, testified that he did some insurance business and lived about two miles east of Baltimore near Forke and was one of the General Assessors in the recent

reassessment for the Eighth, Tenth and Eleventh Districts; *thirteenth district being just across the river from the Brack property* that he was familiar with the Brack property, and with the sales of the Weyler property for \$10,000., contained 90 acres.

*With* ~~it is~~ a rather attractive property on the corner of ~~those~~ *Pott's Spring and Cedar Road, 2 miles from Simonson* ~~two roads~~, very good buildings, pretty good dwelling houses, quite a large dwelling house, very comfortable tenant house, and an unusual number of out buildings, more than are usually found on any property, and I was told it contained 90 acres. I am familiar with the Grafe property. It is located at the head of the Delany's Valley on the road leading from Knoebel's known as the Manor road, about 1 1/2 miles from Hyde Station. The property contains 122 acres and sold for \$13,000. which is about \$106. per acre. I am familiar with the Cowan property which was sold for \$90. an acre, 485 acres. The witness valued the 43 and a fraction acres sought to be taken by the City in this case, with the tenant house, at \$4400. and valued the damage to the balance of the property at \$25. an acre.

Henry Knoebel, a witness of lawful age, called on behalf of the petitioner testified that he lived at Knoebel, eight miles north of Towson, at the head of the Delany Valley and Long Green Valley. Q. How far from the Brack property? A. I suppose about 4 1/2 miles. The witness further testified that he was familiar with Delany Valley Pike all his life; had visited the Brack property, was familiar with the sale of the Sadler Farm on the Pott's Spring Road of 130 acres for \$19,000., and the Weyler property between 67 and 70 acres for \$10,000; that there was some personal property included

in the purchase, the Cowen farm  
\$90.00 per acre, the Gaepe farm 122  
acres for \$13000.00, and the Patterson  
farm of 330 acres for \$25,000.  
He described the Sadler <sup>Place</sup> as a  
very handsome country place, with  
a modern house of 22 Rooms, hot  
and cold water through house, beautiful  
lawn with shade trees and shrubs  
3 tenant houses, two barns, very  
fine land, finely watered, on a  
public road a little more  
than two miles from the  
York Road at Timonium.  
The Brack Place is not on any  
public road, the house being  
a mile from Dulaneys Valley  
Pike which is a toll road,  
and 3 1/2 miles from Towson,  
which is the nearest street car  
line, and the nearest accessible  
railroad station.



Snyder property 39 acres, sold for \$225; the Rampley property also 39 acres sold for \$4500. Q. by Mr. Field: Witness placed \$110. an acre on the Brack place as a whole and allowed \$20. an acre damages for the balance that was left after taking the 44 acres at \$110. an acre.

Mr. John J. Hurst, a witness of lawful age, produced on behalf of the petitioner, testified that he is a member of the Bar of Baltimore, had been particularly interested in real estate development in Baltimore County in the vicinity of Baltimore City; went over the Brack property a number of years ago and went over it again yesterday very thoroughly. Q. by Mr. Field: Now will you tell his Honor and the gentlemen of the jury what in your mind is a fair market value for the 43.9 acres that is to be taken? A. I divided it up like this:- This 15 acres of what I would call bottom land and the 15 acres more of meadow land, not much difference, but a slight difference, that I classed together, and valued at \$75. an acre, \$2250.; then there are 8 1/2 acres of undergrowth adjoining, which I have taken as \$100 an acre, \$850., then there are 5 1/2 acres of good land that are in good shape of cultivation. I have taken that at \$125., total \$3787.50. Then I have taken the two houses, the two frame houses, at \$900. I may be a little high on that, but I could not tell exactly about the state of preservation, but they looked to be in pretty good condition. I don't consider the 75 acres between the land that is to be taken, between the branch and Mr. McCormick's property as being damaged at all, I can't see where there is any particular damage; I am giving the portion next to the hill \$500. my total aggregates \$5187.50. If I understand right, the value arising to the property from the running stream is not to be given over a portion of this land, that is the only right that I could see that had any value to it, the branch being between the house and the way of entering to the main part is a great detriment to the property as it stands. It is an

unusually bad approach. The road cannot be made a direct one because of the hill, and it has to be winding and when this change comes it ~~will~~ be for the better; the road could not be any worse; the general appearance of that piece of property is objectionable because it would have a branch in front of the house, which is always objectionable, and if the bridge which the City is to build, or is to be put over there, that seems that it would make it easier, to get across, and I can't see where the damage will come, that is about the part next to the house; I have given \$500. next to the house, there may be a question about the stream and other questions that can't be taken care of, but the part next to McCormick's property is certainly not damaged. That property would bring more from a commercial standpoint, it is worth just as much for farming purpose, and it would bring more from a commercial standpoint if the development were used for that it would be of more value than it would by being kept together. Now, I can't see how that could possibly be damaged. Of course, the property does not front on the pike, and has no road from it, and I give \$125. to the best property and think it is a good price, and I don't think there is much land in the County outside of that which derives its value from its accessibility to the City, is worth over \$125. an acre. I don't mean to say there are not certain properties, for instance, the Sadler for which Mr. Cromwell paid \$150, but that was in a high state of cultivation, has splendid buildings on it.

The petitioner also <sup>produced</sup> Mr. Ezra B. Whitman and Guy L. Hess, Engineers in the employ of the Water Department of Baltimore City, who testified to the necessity of these proceedings and to taking of this particular piece of land for reservoir purposes by the City of Baltimore.

Thomas J. Lindsay, a witness of lawful age on

behalf of the petitioner qualified as a real estate expert and ~~having testified that he was~~ after having testified to the values of property in the neighborhood, and that ~~he~~ had been one of the three appraisers or commissioners



*appointed by the Court to divide  
the Hampton estate part of which is*

neighborhood and after having testified to his valuation of the property in the premises. Q. Now, will you tell the gentlemen of the Jury, what in your judgment is a fair value, first, for the 43.9 acres as they stand with the improvements, I will ask you afterwards what damages, if any, you think the remaining part of this property will suffer, but first, what in your judgment is a fair market value of the 43.9 acres.

A. The 43.9 acres I will call it 44 acres, I valued at \$65. an acre, making \$2860, the two buildings on the land, I valued at \$1400., that would make \$4260. Q. That is the land, the 44 acres, we will call it for short, with the buildings on it as it stands, you valued at \$4260? A. Yes, \$4260.

Q. What damage, if any, in your judgment will be caused to the remainder of the tract belonging to Mr. Brack, by the taking of this 44 acres with the reservation to him of a road way and right of access to the lake between the road and the Ridgely line? A. I divided that into two portions; that portion of the tract sort of northeast of the water, which contains 75 acres, that being disconnected from the whole farm, from the other, I put a damage to that of \$15. per acre. Then the portion where the buildings stand would be 71 acres and all the improvements are on that portion of it, I put a lump damage on that, in my opinion, it leaves it an over-improved piece of land; there are 71 acres with all those buildings on it, and with this division cutting it up in this way, it may be necessary to consider it as two tracts entirely. If you do and look at it in that way, that land is a tract made up of 71 acres of which 36 acres are wood land, and I would say that was over-improved, or in other words, taking the value of the land and buildings, it would be more than it would sell for, it would cut it down \$3000. With the \$15. an acre on the other portion, which make \$1125., with the \$3000. would make \$4125. damages to the remainder of the tract, making a total damage ~~to~~

*for the land taken and damages to the remainder*  
~~taken and damage to the other, \$8375.~~ The defendant then asked him the question: "In making your estimate of the value of these forty-four acres did you take into account as an element the value of this property as a reservoir site".

To which the petitioner made objection and the Court sustained the objection.

To which action and ruling of Court the defendant then and there excepted and prayed the Court to sign and seal this his third bill of exception, which is accordingly done this *16<sup>th</sup>* day of *November* 1914.

*Thos H. Blumley* (SEAL)

After the testimony set forth in the foregoing bills of exception, each and all of which are made a part of this one, had been offered the petitioner closed its case.

Robert B. Morse, a witness of lawful age, produced on behalf of the defendant, after having been duly sworn, testified as follows:

Mr. Offutt: Your name is Robert B. Morse?

A. Yes.

Q..Where do you live?

A. In Baltimore City.

Q. What is your occupation?

A. Sanitary engineer for the State Board of Health.



Q. How long have you been connected with the State Board of Health?

A. Since June 1912.

Q. Are you a graduate of any institution of technical learning?

A. Yes, I was a graduate of Johns Hopkins, and also of the Massachusetts Institute of Technology.

Q. When did you graduate from these institutions?

A. From the Johns Hopkins in 1901, and the Institute of Technology in 1904.

Q. Since that time what ~~e~~ experience have you had in practical engineering?

A. I have been continuously employed in engineering work since July 1904. I was first with the Government in Washington. I was then employed by the Baltimore Sewerage Commission, I was with the Sewerage Commission about five years, and I was then with the Metropolitan Sewerage Commission of New York for about a year and two-thirds, and since that time, I have been engineer for the State Board of Health.

Q. You say you are the sanitary engineer at this time of the State Board of Health?

A. Yes.

Q. What are the nature of your duties?

A. The duties which the engineering department of the State Board of Health have to perform consist of examining the water supplies and sewerage facilities throughout the State of Maryland. The approval of plans or the disapproval of plans for new water supply and sewerage system, and also the looking into the causes of epidemics, the quality of water supply, the operation of sewerage disposal works, reporting on various towns when asked as to the appropriate sources of water supply, and as to the appropriate methods

of sewerage disposal. We are also doing work for the State in the construction and designing of water supply systems and sewerage systems for state institutions.

Q. In the discharge of the various duties you assume, both in the matter of the State Board of Health and the other enterprises you refer to, the construction of sewerage works and that sort of thing, have you had occasion to familiarize yourself with the flow of the Gunpowder supply and its tributaries?

A. I have, yes sir.

Q. Have you testified as an expert in any case in this Court involving knowledge of sewerage engineering?

A. Yes.

A. I believe you were a witness in the sewerage case?

A. The Mt. Washington sewerage case, yes sir.

Q. Now, do you know where the property that is in controversy here, the Brack property, is located?

A. Yes.

Q. Have you been on that recently?

A. I have twice.

Q. On these occasions did you make any observation in regard to the contour of the land in the neighborhood of Peterson Run?

A. Yes.

Q. Did you have an opportunity of observing the topography of the Brack place, as a whole?

A. Yes.

Q. Now did you take any observation of the relative position of the land on either side of the bridge, or the road leading from the Dulany's Valley to Mr. Brack's house?

A. Yes.

Q. Have you the result of those observations with you?

A. Yes, I have.

Q. When were they taken?

A. These were taken the first of October of this year.



Q. I see you have a diagram in your hand. Does this diagram contain the results of the observations you took?

A. It does.

The witness then testified to the ~~effect of the~~ effect of the varying depths of water on the property at different elevations of the dam, following which the witness was asked the following question:

Q. Have you made any calculations as the drainage area of Peterson Run?

A. Yes.

Q. What is that drainage area?

A. The total drainage area is about 9 1/3 square miles, the drainage area of Peterson Run slightly above the lower line of Mr. Brack's is about 8.9 or practically 9 square miles.

Q. Now what would be the average daily stream flow in average year?

A. The average flow of Peterson Run is probably something under one million gallons per square mile per day. I should expect to find the average runoff of the streams at the Brack property to be about eight million gallons per day, that is, judging from records of the Gunpowder dam which are the nearest thing we have, lacking any gauging themselves.

Q. Have you made calculations of the extent of water that would be impounded at an elevation of 192 on the Brack property?

A. No sir, not 192.

Q. At any elevation?

A. At elevation 237.

Objected to:

Objection Sustained:

Exception Noted.

Mr. Offutt: It is offered to show that in connection with the question asked the witness, that he has made a calculation and investigation of the property of Mr. Brack including that which is taken in these proceedings for a storage, or an

impounding reservoir, and that as a result of his investigation by reason of the topographical features of the ground, a storage reservoir can be readily constructed there which will impound 1,200,000,000. gallons, and that there is a market at this time for such a reservoir and for such a sale, and that the site will be destroyed by the taking of the property sought to be taken in these proceedings, and we further offer to show that it has an independent value as a reservoir site.

*Objected to.  
Objection Sustained.*

To which action and ruling of the Court in refusing to permit the said witness to answer said question and in overruling said offer the defendant excepted and prayed the Court to sign and seal this his fourth bill of exceptions which is accordingly done this *16<sup>th</sup>* day of *November* 1914.

*James I. Duncay* (SEAL)

After the occurrences set forth in the foregoing bill of exceptions each and all of which are hereby made a part of this one, the defendant asked the witness Morse:

Q. *By* Mr. Offutt: Are you familiar with the topography of Baltimore County within a reasonable distance of Baltimore City in regard to the presence of reservoir sites which are available for service as reservoirs in supplying water to the territory of Baltimore City and the thickly settled parts of Baltimore County which is adjacent to it?

A. Yes.

Q. I will ask you whether the Brack property has any peculiar value as a reservoir site?

To which question the petitioner objected.

The Court sustained the objection.

To which action and ruling of the Court in refusing to permit the said witness to answer said question the defendant



excepted and prayed the Court to sign and seal this his fifth  
bill of exceptions, which is accordingly done this 16  
day of November 1914.

James I. Duncan (SEAL)

After the occurrences set forth in the foregoing  
bills of exceptions, each and all of which are prayed to be  
considered a part hereof, the defendant asked the witness Morse  
the following question:

Q. I wish you would define the area of Peterson Run valley,  
and what properties it includes.

A. It includes the properties of the Ridgely property and the  
Brack property, that is above the pond which we are discussing.

Q. I wish you would state whether it has any peculiar features  
which make it adaptable for use as an impounding reservoir.

To which question the petitioner objected.

The Court sustained the objection.

To which action and ruling of the Court in refusing to per-  
mit the said witness to answer said question the defendant ex-  
cepted and prayed the Court to sign and seal this his sixth  
bill of exceptions, which is accordingly done this 16  
day of November 1914.

James I. Duncan (SEAL)

After the occurrences set forth in the foregoing  
bills of exceptions each and all of which are hereby made a part  
of this one, the defendant asked the witness Morse:

Q. I wish you would state whether there are any other sites  
for an impounding reservoir of the capacity of the one which  
might be constructed on that property which have the same ad-  
vantages for an impounding reservoir as one which could be con-  
structed in the valley of the Peterson Run on the Brack property.

To which question the petitioner objected and the Court  
sustained the objection, whereupon the defendant offered to

show in connection with that that there were none.

To which offer the petitioner objected and the Court sustained the objection.

To which action and ruling of the Court in sustaining the objection of the petitioner to the said question and overruling the said offer the defendant excepted and prayed the Court to sign and seal this his seventh bill of exceptions, which is accordingly done: this *16<sup>th</sup>* day of *November* 1914.

*James S. Duany* (SEAL)

The defendant then produced the following witnesses, who testified to their valuations of the property as a whole for agricultural purposes and also for residential purposes, and their estimation of the damage occasioned to the remaining portion of the Brack property after the 43.9 acres were taken by these proceedings. The witnesses in each case being questioned as to their valuations subject to the stipulations and reservations contained in the amendment to the petition, known as Paragraph 3+1/2.

Henry L. Brack, one of the defendants, a witness of lawful age, called in his own behalf, after being duly sworn, testified that he knew of the sale of the Morgan property located near Knoebel about 4.9 miles by road from his property; Mr. Merryman paid \$10,000., \$312. an acre, improved with a nice stone building, barns and out buildings, all in a pretty good shape, sold within the last few months; also the Bernard Duke property in the neighborhood of 98 acres, sold by Howard L. Rider to Mr. Duke, situated on Dover Road and Rolling Run the other side of the Northern Central Railroad 4 1/2 miles of his property, price is in the neighborhood of \$400. an acre; also the Merryman property situated on Stevenson Lane 3.9 miles from his property, 40 acres bought two years ago for \$14,500., or about \$362.50 an acre. Witness Brack further

testified that he was acquainted with the sales of property that had been testified to by the other witnesses in this case and that he valued his own property at \$60,000 as a whole; that he bought the property in 1891 for \$18,000. and at the present time he goes in and out to the City in his machine; he maintains an office in the City and can go to his business from 40 to 45 minutes and that adds value to ~~all~~ the property around the City of Baltimore; that automobiles are increasing the values of property that have no railroad facilities for country homes. The witness further testified that he considered the total damage resulting from the taking of the 44 acres of land about \$35,550.

A. Robinson White, produced on behalf of the defendant, qualified as a real estate expert of over 25 years experience, testified that in his judgment the value of the Brack property is \$42,750. and that by taking the 44 acres of meadow land out the middle of the property that it would be damaged to the extent of 50%.

Benjamin T. Ridgely, a witness of lawful age produced on behalf of the defendant, testified that he is familiar with the Brack property and lived a trifle over three miles from it all his life; is familiar with the sale of the Weyler property and the Poteet property which sold for \$70. an acre; he valued the Brack property at \$210. an acre or approximately \$40,000. for the whole piece; that by taking the 44 acres of meadow land the owner would be damaged about 1/2, or \$20,000.

John V. Wilson, a witness of lawful age produced on behalf of the defendant, testified that he was a land owner in Long Green Valley, where he had lived for 65 years; that he is familiar with that part of the County which is called Dulany Valley, and is familiar with the sales that had been testified to here in Court. He further testified that the value of the Brack property as a whole is worth \$225 an acre



and that because of the damage, and including the damage to the remainder by the taking of the 44 acres, he thought that the 44 acres is worth at least \$500. an acre.

Mr. Adam G. Caulk, a witness of lawful age, produced on behalf of the defendant, testified that he had lived for about 24 years in the neighborhood of the Brack property, is familiar with what sales had taken place that had been testified to in Court and also testified that the Brack property is worth about \$300. an acre, and that including the damages to the remainder of the property he considered that the 44 acres are worth not less than \$600. an acre.

George W. Yellott, a witness of lawful age, on behalf of the defendant, testified that he is one of the County Commissioners of Baltimore County and is familiar with the sales of property in the Dulany Valley within a five mile limit of the Brack property. The witness testified that he estimated the value of the Brack property as a whole at from \$225. to \$250 an acre.

Charles E. Weakley, a witness of lawful age, produced on behalf of the defendant, testified that he was a farmer, lived 4-1/2 miles from the Brack property near a village called Sweet Air, had known the properties in the Valley for 35 or 40 years and is familiar with the sales of the various properties that had been testified to in Court; that he placed the value of the whole of the Brack property at \$200. an acre, and that he estimated the balance of the property would be worth, after the 44 acres had been taken subject to the stipulations and reservations in the amended petition at about \$20,000.

J. Marsh Matthews, a witness of lawful age, called on behalf of the defendant, qualified as a land owner, testified that he lived in the heart of the Dulany Valley, had lived there all his life and that he is familiar with the sale of the several pieces of property that had been testified to in

these proceedings, and that he considered the Brack property to be worth \$200. an acre and may be a little more, and that the balance of the property after these 44 acres were taken out of the property would not be worth more than \$18330., and therefore estimated the value of the 44 acres, including the damage to the remainder of the property at \$20,000.

Thomas J. Kane, a witness of lawful age, produced on behalf of the defendant, testified that he was a farmer living in the neighborhood of the Brack property and has known the Brack property more or less all his life; is familiar with the sales of property within the five mile limit of the Brack property within the last five years, and testified that the Brack property is worth \$225. an acre as a whole and that after taking the 44 acres the remainder would be worth about \$125. an acre.

John Ridgely, a witness of lawful age, called on behalf of the defendant, testified that he lived at Hampton near Towson, and was part owner of the Hampton Estate and had lived there all his life; was familiar with the Glen Ellen property all his life; is also familiar with the sales of the property mentioned in Court within the last five years and within the five mile limit of the Brack property. He put the value of the whole Brack property at \$47,500. or \$250. an acre and the value of what would be left after the 44 acres are taken out of the middle of the property, having regard to the stipulations and reservations of the amended petition, which were read to him, at \$175. an acre.

G. Frank Morgan, a witness of lawful age, called on behalf of the defendant, qualified as a land owner, testified that he had lived in the Dulany Valley for 65 years, and is familiar with the sales of property that had been made within the five mile limit as testified to by the other witnesses in this case. He place the value of the property as a whole

at from \$240 to \$250. an acre. He testified that the meadow land was worth three times as much as the other land on the place and that the balance of the farm, after the 44 acres were taken, would be worth from \$100. to \$120. an acre.

C. W. Jessop, a witness of lawful age, called on behalf of the defendant, testified that he lived in Dulany Valle all his life; was a farmer, had known the Brack property since he was a small boy and had been living in the neighborhood ever since; was familiar with the sales of the various properties that had been mentioned within the five mile limit and within five years; he also testified that the Brack property as a whole was worth \$42750. and that the part on the west side of Peterson Run would be damaged about  $\frac{2}{3}$  of its value, and the part on the east side of the Run about  $\frac{1}{2}$  its value; he estimated the damage incident to the taking of the 44 acres including the value of the 44 acres at \$29,025.

Mr. William P. Cole, a witness of lawful age called on behalf of the defendant, testified that he was the present Clerk of the Court for Baltimore County and engaged in the real estate business about 18 or 20 years and was familiar with the insurance business; is familiar with the Dulany Valley and familiar with the Glen Ellen property, a portion of which Mr. Brack owns, and is also familiar with the sales that have taken place within five miles of the Brack property within the last five years. He placed the price of the 44 acres at \$18,300, which includes the damage to the remainder of the property, which he placed at \$50. an acre after the 44 acres were taken from it.

The defendant here closed its case, and the petitioner offered in rebuttal W. Bernard Duke, a witness of lawful age, who testified that the actual price he paid for the property that had been testified to by the



ON CROSS EXAMINATION, THE DEFENDANT AND HIS WITNESSES  
TESTIFIED AS FOLLOWS:

FRANK MORGAN testified, on cross examination, that HENRY L. BRACK testified that the Merryman property <sup>referred to</sup> purchased by him was only about one-half a mile from the York Road between Baltimore City and Towson. That the developement had already extended out the York Road nearly to Stevenson's Lane; AND that the property purchased by Mr. Duke was right near Riderwood station, on the Northern Central Railroad, and at the entrance to Green Spring Valley, and surrounded by handsome country residences.

A. ROBINSON WHITE testified that he had not sold any land within five years and within five miles of the Brack property and that he did not know of a sale of any similar property within five miles and within five years, at anything like the price he had put on the Brack property.

BENJAMIN T. RIDGLEY testified that he had not known of any <sup>sale of</sup> property similar to the Brack property, or anything like the value he had put on the Brack property, and the Brack property had no advantage over the Sadtler property, which had been sold for less than \$150 per acre.

JOHN <sup>G</sup> WILSON testified that he did not know of any sale of property similar to the Brack property at one half as much as he had put upon the Brack property.

ADAM G. CAULK, GEORGE W. YELLOTT, CHARLES E. WHEATLEY, J. <sup>Math</sup> MATTHEWS, THOMAS J. <sup>K</sup> KANE and JOHN RIDGLEY all admitted, on cross examination, that they did not know of any sale of similar property between private parties within five years and within five miles of the Brack property at one-half the valuation placed by them on the Brack property, and Matthews and Ridgley further admitted that the Brack Property had no advantage over the Sadtler Property.

LEGISLATIVE VS. JUDICIAL: THE DEFENDANT AND HIS COUNSEL  
ON CROSS EXAMINATION, THE DEFENDANT AND HIS COUNSEL  
And after the proceedings were had, the  
G. FRANK MORGAN testified, on cross examination, that the 30 acres,  
which he had bought for \$10,000, which was referred to by the  
witness Brack, had improvements on them which were worth the entire  
amount he paid for the place.

And the defendant offered the following prayers:

WILLIAM P. COLE testified that he had not sold any farm within  
the last five years; Had been dealing in property near Towson, sell-  
in ~~ing~~ <sup>the Brack property</sup> small tracts; That he ~~did~~ not have any advantage over the  
Sadler property and that he did not know of a sale of property  
similar to the Brack property, ~~at~~ anything like the value he had  
put on the Brack property. Mr. Cole further testified that there  
had been no development <sup>alone</sup> at the Dulaney Valley Pike and that there  
had been only one house built in Dulaney Valley in the last 25 years,  
and that was a house built on Hampton by Mr. Ridgley.

We assent to the foregoing bills of exceptions

November 14/1914

*[Signature]*  
Attorney for petitioner.  
*[Signature]*  
Attorney for Defendants.



And after the proceedings were had and the evidence offered, set forth in the foregoing bills of exceptions, each and all of which are hereby made a part of this one, the petitioner offered the following prayers:

<sup>petitioner's</sup>  
Here insert prayers:

And the defendant offered the following prayers:

Here insert defendant prayers:

And the Court granted the ~~plaintiff's~~ <sup>Petitioner's</sup> 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup> prayers and refused the Defendant's <sup>Fifth</sup> prayer, to which action of the Court in granting the Plaintiff's 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup> prayers and refusing the Defendant's <sup>Fifth</sup> prayer the defendant excepted and prayed the Court to sign and seal this his eighth bill of exceptions, which is accordingly done this  
16<sup>th</sup> day of November 1914.

Frank J. Duncay (SEAL)

We assent to the foregoing bills of exceptions

November 14/1914

J. J. Field  
Attorney for petitioner.  
R. J. Allen  
Attorney for Defendants.



No. 5

Mayor <sup>Wm</sup> City Council

VS.

Henry Adams <sup>Wm</sup> wife

0/37/8/1

In the Circuit Court for  
Baltimore County, Condemna-  
tions.

-----

MAYOR AND CITY COUNCIL OF  
BALTIMORE

VS.

HENRY L. BRACK

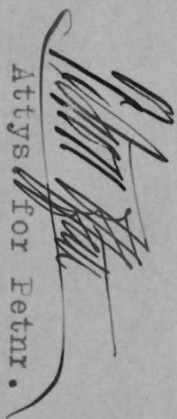
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PETITION AND ORDER OF COURT.

-----

Mr. Clerk:-

Please file.

  
Attys for Petnr.

Filed Jan. 12/1914

HENRY L. BRACK

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY,  
CONDEMNATIONS.

It is further ordered that such exceptions may be signed at any time prior to said date.

Frank H. Dineen



In the Circuit Court for  
Baltimore County.  
Condemnations.

---

The Mayor and City Council  
of Baltimore

VS

Henry L. Brack, et.al.

---

ORDER FOR APPEAL

---

Mr. William P. Cole, Clerk,

You will please file the  
within order for an appeal

*William P. Cole*  
*J. Scott Smith*  
Attorneys for debts  
the landowners.

*Filed Oct 20 1914*

Mayor and City Council  
of Baltimore  
vs  
Henry L. Brack et.al.

: In  
: the Circuit Court for  
: Baltimore County.  
: Condemnations.

Mr. William P. Cole, Clerk,

You will enter an appeal from the judgment in  
the above entitled proceeding to the Court of Appeals, of Maryland.

*William J. Ogden*  
*P. Scott Ogden*

Attorneys for the defendants  
the landowners.

(1)

INQUISITION, Made and taken at Bar, in the Circuit Court for Baltimore County, in the matter of the petition of the Mayor and City Council of Baltimore against Henry L. Brack and Emma Brack, his wife, for the condemnation of the property hereinafter mentioned,

WITNESSETH, that we, the Jurors whose names are hereunto subscribed and seals affixed, being duly empanelled, sworn and charged to inquire into, ascertain and justly and impartially value the damages which the defendants will sustain by the taking, use and occupation of the property described in the amended petition and containing 43-9/10 acres of land more or less for the purposes set out in said amended petition, having heard the evidence and duly considered the same, do find and determine the damages to be sustained by the said Henry L. Brack and Emma Brack, his wife, by the taking of said land described in the amended petition for the purposes therein specified, and subject to the reservation in favor of the said defendants, their heirs and assigns, mentioned in paragraph 3½ of said amended petition, and subject to the obligation upon the Mayor and City Council of Baltimore imposed upon it by said paragraph 3½ of said amended petition, at the sum of \$15,967

*Fifteen thousand nine hundred & sixty seven dollars.*

and upon the payment of said sum by said Mayor and City Council of Baltimore to the said defendants, the title to said tract of land described in said amended petition shall be and become vested in the said Mayor and City Council of Baltimore in fee simple subject to the reservation and obligation in said paragraph 3½ of said amended petition set out.



In Witness Whereof, We, the said Jurors, have hereunto set our hands and seals

this ..... day of October 14 in the year <sup>nineteen</sup>~~eighteen~~ hundred  
and ~~ninety~~ fourteen.

Geo W Buckman [SEAL]

Saml A Brooks [SEAL]

Wm V Foster [SEAL]

Leve Justice [SEAL]

James R Gads [SEAL]

Jacob H Reinhardt [SEAL]

Geo W Richmond [SEAL]

W. W. Green White [SEAL]

George B. Brown [SEAL]

Edward C. Coolahan [SEAL]

Albert S Watts [SEAL]

J. T. McEnroe [SEAL]

*Inquisition*

*Filed Oct 14 1914*

DEFENDANTS' (LANDOWNERS) FIRST PRAYER.

The jury are instructed that they should award to the defendants (landowners) the fair market value of the land taken in this proceeding, and in addition thereto an amount equal to the damages, (if any they find) to the remainder of defendants' property described in the evidence in this case, caused by the taking of the part so sought to be condemned, and that the measure of the damages so to be allowed (if any they find) is the difference between the present fair market value of defendants' farm known as "Glen Ellen" and described in the evidence before the property described in the amended petition is taken, and the value of the remainder of said property after the property so described in said petition is taken for the purpose set forth in said petition.

Megary case, 122 Md. 20,

Garrett case, 120 Md. 611.

*Filed Oct 14 1914*

*Granter  
J. J. O.*



DEFENDANTS' (LANDOWNERS) SECOND PRAYER.

The jury are instructed that in assessing the value of the defendant's property described in these proceedings they are to allow such sum as they find to be the present fair market value thereof, and in estimating such value they are to consider the nature and location of the property, its improvements, its productiveness and the uses for which they find from the evidence it is available and adapted.

Morgan case,

2 Lewis (2d Ed.) 478,

Gallaway vs. Hubner, 99 Md. 535,

Boom Co. vs. Patterson, 98 U.S. 408,

Elliott on Roads & Streets, par. 260,

8 L.R.A. 124,

9 Ed. Sedg. Damages, §1085.

*Filed Oct 14 1914*

*Graves  
J. J. D.*

DEFENDANTS' (LANDOWNERS) THIRD PRAYER.

The Court instructs the jury that the term "market value" as used in the instructions in this case means the fair value of the property as between one who is willing but not forced to purchase and one who is willing but not forced to sell, -- not what it would bring at a forced sale.

Megary case, 122 Md. 30,

Record 31.

*Granted*  
*J. J. D.*

*Filed Oct -14 1914.*

DEFENDANTS' (LANDOWNERS) FOURTH PRAYER.

The jury are instructed that in estimating the value of the defendants' (landowners) property described in these proceedings they are not <sup>bound</sup> to consider the prices paid for any property unless they find such property <sup>in their judgment</sup> was similar in character to that of the defendants' property sought to be acquired by the plaintiff (The Mayor and City Council of Baltimore) in these proceedings.

Morgan case,

Court's rulings here as to limits,

Wigmore Ed. par. 462,

2 Lewis Em. Dom. (2d Ed.) 443,

Jones on Ev. 168, 263, 387.

*Granted  
as amended  
F. J. D*

*Filed Oct 14 1911*





Mayor R.E.C.

Dr. A.K.

BAR

CONDITION

UNION

5<sup>th</sup>  
Defendants 9<sup>th</sup> prayer

The jury are instructed that there is no  
evidence in this case legally suffic-  
ient to show that the conditions  
resulting from the taking of the  
portion of the Defendants property -  
ought to be condemned will  
~~that~~<sup>not</sup> affect the health of any person  
residing upon any portion of  
Defendants remaining land.

Refused.

J. J. D

Filed Oct 14 1914

May 18<sup>th</sup> 1891  
Henry L. Black



PETITIONER'S FIRST PRAYER

The Court rules as matter of law, that under the Act of 1908, Chapter 214, the Mayor and City Council of Baltimore, has the right to condemn any land which may be required for any of the purposes of that act, that among the purposes of ~~xxxx~~ that act were to create a large reservoir or lake in the valley or basin of the Gunpowder River and its tributaries and to protect the clearness and purity <sup>of</sup> the water by protecting the water shed, by afforesting or otherwise; and if the Jury find that the City is building a dam to create a lake or reservoir under the authority of said act, and that a part of the land sought to be condemned will be overflowed by the water of the lake or reservoir formed by said dam, and that the balance of the land sought to be condemned in this case is so situated that the drainage from said land would flow immediately into the lake or reservoir which Baltimore City is about to form under said act and affect the clearness or purity of the water in said reservoir, then the petitioner, the Mayor and City Council of Baltimore has the right to condemn the land mentioned in the petition, and the verdict of the Jury should be for the petitioner.

*Granted*  
*J. J. D.*  
*Filed Oct 14 1914*

PETITIONER'S SECOND PRAYER.

The Court instructs the Jury that they ought not to regard or be influenced by any information which may have come to them from reading the newspapers or otherwise in regard to what may have been paid by the city for other property in the Gunpowder Valley, nor should the Jury consider or be influenced by any information they have heard from any source as to the amount of damage awarded by the Jury in any other case; but in forming their judgment and inquisition of the amount of damage to be awarded to the defendants in this case, the Jury should be governed solely by their view of the premises and the evidence which the Court has admitted in this case.

*Granted,  
F. J. D.*

*Filed Oct 74 1914*

PETITIONER'S THIRD PRAYER.

The Court instructs the Jury that the inquisition of the amount of damage in this case should be founded entirely upon evidence offered and admitted in this case, and their own view of the premises; and the Jury should not consider any evidence which the Court has excluded in this case, or any information which the Jury may have received from any source other than their view of the property and the evidence admitted by the Court in this case.

*Refused,  
Conceded by 7-1  
J. J. D.*

*Filed Oct-14<sup>th</sup> 1914*



PETITIONER'S FOURTH PRAYER.

The Court instructs the Jury that there is no evidence in this case legally sufficient to show that any condition affecting the health of any person who might be residing upon any portion of the land of the defendants, which is not taken, would result from the taking of the portion sought to be condemned in these proceedings.

*Granted*  
*J. J. D.*

*Filed Oct 14 1914*

PETITIONER'S FIFTH PRAYER

The Court instructs the Jury that the measure of damages for which the Jury should find their inquisition is the value of the land taken and the damage, if any, which the Jury may find will be caused to the remainder of the tract by the taking of such portion, and that in estimating the damages to the remainder of the tract the jury should not allow any speculative or conjectural damage but should allow only such difference, if any, in the market value of the remainder as the Jury may find will be the natural and probable result of the taking of such portion.

*Granted,  
J. J. D.*

*Filed Oct 14 1914*

RIDGELY vs BALTIMORE, 119 Md. 581.

*Sixth*  
Petitioner's Fourth Prayer

The Court instructs the jury that the market value of land is not to be measured by what an owner who does not want to sell may hold his land at, or say he would take for it, but the market value is what land will sell for if the owner wants to sell

Granted

J. J. P.

Filed Oct 14 '19/14



PETITIONER'S SEVENTH PRAYER

The Court instructs the Jury that they should not allow any damage to the defendants on account of being deprived of the outlet through the city's property to Loch Raven referred to by the witness Henry L. Brack, as there is no evidence legally sufficient to show that the defendants have any legal right to use said outlet.

*Granlin*  
*H. J. D.*

*Filed Oct 14 1914*

PETITIONER'S EIGHTH PRAYER.

The Court instructs the Jury that they have a right to disregard the estimate of any witness which is not based upon sales of similar property or other reasons sufficient in the judgment of the jury to justify such estimate.

Hurlock case, 113 Md.681

*Granted*  
*J. J. D.*

*Grw*

*Filed Oct 14 1914*

Mayer 122

78

Brack



GEORGE HALSTED BOYLAND  
& WIFE.

DEED TO

THE MAYOR AND CITY  
COUNCIL OF BALTIMORE.

*Deed No. 3.*

GEORGE HALSTED BOYLAND & WF. : This Deed made this tenth day of  
DEED TO : October in the year one thousand  
THE MAYOR AND CITY COUNCIL : eight hundred and eighty seven  
OF BALTO. : between George Halsted Boyland and  
: Ellen G. Boyland, his wife of  
Baltimore City, in the State of Maryland of the first part, and  
The Mayor and City Council of Baltimore, a duly incorporated Body  
of the second part. Witnesseth that in consideration of the sum  
of five thousand dollars lawful money paid the parties of the first  
part by the party of the second part, before the sealing and delivery  
hereof, the receipt whereof is hereby acknowledged, the said parties  
hereto of the first part/ do grant and convey unto the said The  
Mayor and City Council of Baltimore, its successors and assigns,  
all their and each of their right, title, interest and estate, both  
at law and in equity, in fee simple, in and to all that piece  
or parcel of land, situate lying and being in Baltimore County in  
the State aforesaid, and described as follows, viz:

Beginning for the same at a stone marked W. B. now planted  
at the end of the south forty two degrees east fifteen hundred and  
seventy six feet line of a tract of land purchased by the Mayor  
and City Council of Baltimore aforesaid from Charles Gilmer and others  
dated about June 6, 1881 and by deed recorded on that day in Liber  
W. M. I. No. 121, folio 505&c., one of the land records of said  
Baltimore County and running thence the following courses and  
distances, viz:

South 42° east 388 feet, south 49° east 477 "

North 89° east 333 feet

south 45 1/4° east 253 "

North 86 1/2° east 182 "

South 46 1/2° west 222 "

South 2° east 265 "

South 28 3/4° east 229 " to a stone now planted, marked

W. B. A. the commencement of the north 52 1/2 degrees east 1340 feet  
line of a tract of land purchased by the City aforesaid from  
Latimer Hoffman, Trustee and others on Sep. 25, 1877 and recorded

by deed amongst the land records of Baltimore County aforesaid about that ~~time~~ and running thence and running thence and binding on the said tract of land, the following courses and distances, viz:

North  $52\frac{1}{2}^{\circ}$  east 1340 feet

North  $41\frac{1}{2}^{\circ}$  east 210 "

North  $31\frac{1}{4}^{\circ}$  east 230 "

North  $15\frac{1}{2}^{\circ}$  east 145 "

North  $17^{\circ}$  east 170 "

North  $31\frac{1}{2}^{\circ}$  east 150 "

North  $32\frac{1}{4}^{\circ}$  east 45 " to a point in the centre of the

east side of Peterson's Run Bridge, thence crossing <sup>ing</sup> the centre of said bridge north  $61^{\circ}$  west 165 feet thence north  $24\frac{3}{4}^{\circ}$  east 335 feet to a point 100 feet south of the high water mark of Loch Raven and running thence and binding on said Lake the following courses and distances, keeping 100 feet from the said high water mark, viz: north

North  $48^{\circ}$  west 100 feet

North  $68\frac{3}{4}^{\circ}$  west 400 "

North  $83\frac{1}{2}^{\circ}$  west 623 "

North  $55^{\circ}$  west 100 "

North  $64\frac{3}{4}^{\circ}$  west 275 "

North  $22\frac{1}{2}^{\circ}$  west 62 " intersecting the beginning of the south 50 degrees west 1677 feet line of the tract of land purchased by the said City from the said Charles Gilmor and others, and running thence and binding on the said line south  $50^{\circ}$  degrees west 1677 feet to the place of beginning, containing 87 acres (eighty seven) of land more or less, (See ~~plat~~ hereto attached and for title see last will and testament of Robert Gilmor dated Feby. 10, 1875 and probated in the office of the Register of Wills of Baltimore City and the devise therein named to his daughter Ellen now the wife of said George Halsted Boyland, see also deed from John Glenn Trustee to Charles <sup>L</sup>. Gilmor, in trust &c. dated March-1848 and recorded in liber A. W. B. No. 376, fol. 31&c., one of the Land Records of said County but now City.

Together with the improvements thereon, and the rights and appurtenances thereto belonging or appertaining.



To Have and To Hold the said piece or parcel of land and premises hereby mentioned to be granted and conveyed with the rights and appurtenances aforesaid unto the said the Mayor and City Council of Baltimore, its successors and assigns, to its and their proper use and benefit forever in fee as aforesaid, and the said parties herero of the first part, covenant that they have not done, or suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed, that they will warrant the said property specially to the said the Mayor and City Council of Baltimore its successors and assigns, and that they will execute such further assurances as may be requisite to confirm these presents.

Witness the hands and seals of said grantors on the day and year first herein written.

Test:

Henry Duvall.

G. Halsted Boyland, (Seal)

Ellen G. Boyland, (Seal)

State of Maryland,

Baltimore City, SS:

I hereby certify that on this tenth day of October, in the year one thousand eight hundred and eighty seven, before the subscriber a Justice of the Peace of the State of Maryland, in and for the City of Baltimore, aforesaid personally appeared George Halsted Boyland and Ellen G. Boyland, his wife, parties of the first part and the grantors in the foregoing deed and each acknowledged the same to be their respective deed and act.

Henry Duvall, J. P.

State of Maryland,

Baltimore City, Sct:

I hereby certify that Henry Duvall, Esquire before whom the annexed acknowledgments were made, and who has thereto subscribed his name was at the time of so doing a Justice of the Peace of the State of Maryland, in and for the City of Baltimore duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments, I further certify that I am acquainted with the

hand writing of the said Justice and verily belive the signature  
to be his genuine signature.

(Seals) In testimony whereof I hereto set my hand  
(Place) and affix the seal of the Superior Court  
of Baltimore City this 10th day of October  
A. D. 1887.

Jas. Bond,

Clerk of the Superior Court of Baltimore City.

Legal form and sufficiency approved Oct. 10/1887

Jas. W. McElroy,

Examiner of Titles.

Recorded Oct. 13, 1887 at 2 P. M. & Ex'd.

Per John W. Shanklin, Clerk.

STATE OF MARYLAND,

BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY that the foregoing is a true copy taken  
from Liber J. W. S. No. 162, folio 234&c., one of the Land Records  
of Baltimore County.

In Testimony Whereof I hereto set  
my hand and affix the seal of the  
Circuit Court for Baltimore County  
this 13th day of October, A. D. 1915.



*William P. Cole*

Clerk of the Circuit Court for Baltimore County.

W.M.I. 121-505.

CHARLES GILMOR, ETAL.

DEED TO

THE MAYOR AND CITY

COUNCIL OF BALTIMORE.

*Johnston & Co. Inc. N.Y.*

CHARLES GILMOR, ETAL. : This Deed made this fourteenth day of  
DEED TO : May in the year one thousand eight  
THE MAYOR & CITY COUNCIL : hundred and eighty one by Charles Gilmor  
OF BALTIMORE. : of Baltimore County, Mary Gilmor, George  
: Halstead Boyland and Ellen G. Boyland

his wife, of the City of Baltimore in the State of Maryland parties  
of the first part, James Latimer Hoffman, Trustee as hereinafter  
mentioned of the said City of Baltimore party of the second part  
& John G. Medinger and Margaretta Medinger his wife parties of the  
third part also of the City of Baltimore.

Witnesseth, whereas heretofore, by deed dated on the 24<sup>th</sup>  
day of March 1848 and recorded among the land records of Baltimore  
City in Liber A. W. B. No. 396, folio 31&2., John Glenn Trustee  
conveyed the property therein described and of which that hereinafter  
described and conveyed is part unto Charles *L.* Gilmor, in trust  
for Ellen W. Gilmor, wife of Robert Gilmor for life with power to  
the said Robert Gilmor to dispose of the same by will among their  
children and with power to the said trustee to Mortgage the said  
property to the extent of twenty eight hundred dollars. And whereas  
afterward the said Charles *L.* Gilmor, Trustee as aforesaid in  
pursuance of the power contained in said deed did mortgage said  
property to John Glenn by deed dated on the 13<sup>th</sup> day of October 1852  
and recorded among the Mortgage records of *of* Baltimore County in liber  
H. M. F. No. 2, folio 68, which said mortgage was afterward assigned  
by Henrietta R. Glenn, Trustee and others to Robert Gilmor, Jr.  
by deed dated 15<sup>th</sup> October 1866 and recorded among said mortgage  
records in Liber J. H. L. No. 25, folio 17&c., and by said Robert  
Gilmor, *Junior* to Noah Worhtington by deed dated 10 Oct. 1871 and recorded  
among said records in E. H. A. No. 43, folio 128&c.

And whereas by an order of the Circuit Court for Baltimore  
County dated on the 1st day of March 1867 in the matter of the  
petition of Ellen W. Gilmor the above named James Latimer Hoffman  
was appointed trustee in the place and stead of Charles *L.* Gilmor,  
deceased and whereas by deed dated on the second day of April 1878  
and duly recorded among the said land records of Baltimore County



between Robert Gilmor, Junior, Noah Worthington the Mayor and City Council of Baltimore Mentor A. Gilmor wife of Harry Gilmor and James Latimer Hoffman, Trustee certain property was conveyed to the Mayor and City Council of Baltimore in fee, free and discharged and released from the mortgage before referred to and recited and the balance due under said mortgage and its lien upon the land not conveyed to the said Mayor and City Council of Baltimore was assigned and conveyed to James Latimer Hoffman, Trustee.

And whereas the said Robert Gilmor departed this life in the year 1874 leaving a will which was duly admitted to probate by the Orphans Court of Baltimore City by which among other things he left and bequeathed to his son Charles Gilmor above named the field known as Elder Cottons field containing fifty acres as also Elder Cotton (No. 8) for life and after his death to the testators daughter Ellen subject to an annual charge of one hundred and twenty five dollars to his daughter Mary Gilmor above named.

And whereas further the said John G. Medinger by deed dated on the 26<sup>th</sup> day of July 1879 and recorded among the said land records of Baltimore County from Benjamin F. Horwitz trustee became seized of a small tract of land part of said Elder Cottons field or next adjoining thereto, and whereas the several parties hereto of the first, second and third parts have agreed among themselves to sell and convey the land hereinafter described unto the Mayor and City Council of Baltimore for the sum of fifty dollars per acre, the said James Latimer Hoffman Trustee to be paid eight hundred dollars, and to release said land sold as aforesaid from the effect and operation of the mortgage herein before recited that being the full proportionate part of the same secured by the land conveyed by this <sup>Deed</sup> ~~and~~ the said John G. Medinger to be paid four hundred dollars in full of all claims he may have in and upon the same and the balance of the said purchase money to be paid to the parties of the first part.

Now therefore this deed witnesseth that in consideration of the premises and the payment of the sum of nineteen hundred and fifty two 18/100 dollars to the parties of the first part and of the sum

of eight hundred dollars to the party of the second part, and of the sum of four hundred dollars to the parties of the third part the receipts of which several sums are hereby respectively acknowledged by said several parties the said Charles Gilmor, Mary Gilmor, George Halstead Boyland and Ellen G. Boyland, his wife James Catimer Hoffman Trustee John G. Madeinger and Margaretta Medinger, his wife do according to their several interests and estates grant and convey unto the Mayor and City Council of Baltimore and its assigns all that tract of land situate and lying in Baltimore County and described as follows, that is to say: Beginning for the same on the south 55 1/4 degrees west 1856 feet line of a tract of land purchased by the Mayor and City Council of Baltimore from William Gilmor and others recorded in liber E. H. A. No. 81, folio 474, one of the land records of Baltimore County, 108 feet from end of said line and running thence the following courses and distances, viz: south 42 degrees east 1576 feet thence north 50 degrees east 1677 feet thence north 54 degrees west 248 feet thence north 12 degrees west 234 feet thence north 11 1/4 degrees east 408 feet thence north 33 degrees west 160 feet thence north 74 1/2 degrees west 313 feet, thence north 74 degrees west 343 feet, thence south 55 1/4 degrees west 1757 feet to the place of beginning, containing sixty three acres and seven perches of land, more or less.

(Place for Plat here.)

Together with<sup>all</sup> the improvements thereon made being and erected and all the ways, waters, roads, rights and appurtenances to the same belonging or in anywise appertaining. To have and to hold the said property and premises hereby granted and conveyed to the Mayor and City Council of Baltimore and its assigns in fee simple for ever and the said Charles Gilmor, Mary Gilmor, George Halstead Boyland and Ellen G. Boyland, his wife and John G. Medinger according to their respective interests, do hereby covenant and agree that they will warrant specially the property hereby conveyed and intended so to be.

And that they will execute such further assurances as may be requisite.

Witness their hands and seals.

Test:

as to Chas. Gilmor,	Charles Gilmor,	(Seal)
Jas. L. Gallagher.	Mary Gilmor,	(Seal)
as to Mary Gilmor, J. Halstead	<i>J</i> Halstead Boyland,	(Seal)
Boyland, Ellen G. Boyland, J.	Ellen G. Boyland,	(Seal)
Latimer Hoffman, John G. Medinger and	J. Latimer Hoffman,	(Seal)
Margaretta Medinger,	Trustee.	
J. Howard.	John G. Medinger,	(Seal)
	Margaretta Medinger,	(Seal)

State of Maryland,

Baltimore County, Sct:

I hereby certify that on this fourteenth day of May 1881 before me the subscriber a Justice of the Peace of the State, State aforesaid in and for the County aforesaid personally appeared Charles Gilmor and acknowledged the foregoing deed to be his act and deed.

Jas. L. Gallagher, J. P.

State of Maryland,

City of Baltimore, Sct:

I hereby certify that on this eighteenth day of May 1881 before me the subscriber a Justice of the Peace of the State aforesaid in and for the City aforesaid personally appeared Mary Gilmor *G* George Halstead Boyland, Ellen Boyland, John G. Medinger, Margaretta Medinger and James Latimer Hoffman, Trustee and did each acknowledge the foregoing deed to be their act and deed, respectively.

J. Howard, J. P.

State of Maryland,

Baltimore City, Sct:

I hereby certify that James Howard, Esquire before whom the annexed acknowledgments were made and who has thereto subscribed his name was at the time of so doing a Justice of the Peace of the State of Maryland in and for the City of Baltimore duly commissioned and sworn.

(Seals)

(Place)

In Testimony whereof I hereto set my hand  
and affix the seal of the Superior Court of  
Baltimore City this 28th day of May, A. D.  
1881.

F. A. Prevost,

Clerk of the Superior Court of Baltimore City.

Approved: John Gill, Jr.

May 10, 1881 examiner of titles.

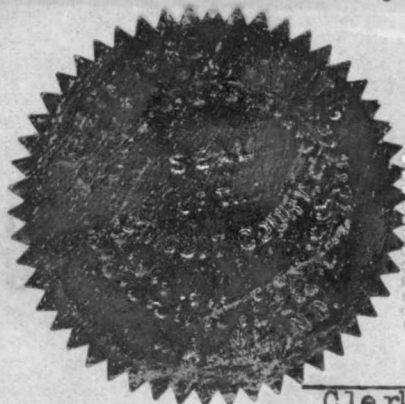
Recorded June 6, 1881 at 10.30 A. M. & Ex'd.

Per W. M. Isaac, Clk.

STATE OF MARYLAND,

BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY that the foregoing is a true copy taken  
from Liber W. M. I. No. 121, folio 505&c., one of the Land Records  
of Baltimore County.



In Testimony Whereof I hereto set  
my hand and affix the seal of the  
Circuit Court for Baltimore County  
this 13th day of October, A. D. 1915.

*William P. Cole*

Clerk of the Circuit Court for Baltimore County.



151

This Deed, made this twenty-sixth day of June in the year of our Lord one thousand eight hundred and seventy three by William Gilmore, of Baltimore County, of the first part, Robert Gilmore Jr, of the City of Baltimore, of the second part, and William A. Fisher, of Baltimore County, of the third part, unto the Mayor and City Council of Baltimore, of the fourth or other part.

Whereas the party of the first part hath sold to the party of the fourth part the property hereinafter mentioned for the sum of nine thousand Dollars, and the parties of the second and third parts are Mortgagees of the lands of which that hereby conveyed is a parcel and unite herein for the purpose of relinquishing the operation of their Mortgage upon said land, and in order to convey all their interest therein to the party of the fourth part, retaining the lien of their Mortgage upon the residue of the lands included therein.

This Deed Witnesseth that in consideration of the sum of nine thousand dollars paid to the party of the first part by the party of the fourth part and of the sum of five dollars paid to each of the parties of the second and third parts, the said parties of the first,

second and third parts, according to their several interests in the same, do hereby grant, bargain and sell, alien, enfeoff and convey unto the party of the fourth part, its successors and assigns, in fee simple; All that tract or parcel of land situate in Baltimore county, and described as follows; that is to say; Beginning for the same on the North side of the Old York Road, now the Jawsontown and Dulaneys Valley Turnpike, at a point bearing North fifty five and a quarter degree East three hundred and fifty four feet from a large stone (heretofore planted at the end of the South forty nine and three quarters degree West seventy eight perches line of the whole tract as allotted by decree passed on the second day of April 1832, upon the petition of David Ridgely, to Priscilla White, and running thence along the North side of said road North fifty five and a quarter degree East seven hundred and fifty five feet to a point distant ten perches on the same course reversed from the West edge of the stream of the Runpander at or near the Bridge at Merediths Ford, thence crossing said road, leaving the Western edge of said stream to the eastward one hundred and sixty feet distant, the following courses and distances South thirty seven degrees East four

hundred and forty feet, thence South sixty five and three quarters degrees East five hundred and twenty six feet, thence South eighty eight and a half degrees East seven hundred and seventy nine feet, thence South eighty and a quarter degrees East four hundred and seventy three feet, thence South fifty five and a quarter degrees West eighteen hundred and sixty five feet, thence South forty one and a half degrees West seven hundred and fifteen feet to the point of Beginning.

Containing forty acres of land, more or less. Being a part of the same land which was conveyed by Charles S. Kilmer Trustee and Robert Kilmer and Wife to Robert Kilmer Jr. by deed dated the 22<sup>nd</sup> day of September A.D. 1864, and recorded among the land records of said County in Liber J. N. L. No. 43 folio 111<sup>re</sup>, and which is mentioned and described in a Mortgage from said Robert Kilmer Jr. to said William A. Fisher recorded among the Mortgage records of said County in Liber J. N. L. No. 21 folio 55<sup>re</sup> and in another Mortgage from said Robert Kilmer Jr. to said Fisher recorded among said Mortgage records in Liber E. N. A. No. 42 folio 203<sup>re</sup>, and a part of which was conveyed to said William Kilmer by Robert Kilmer Jr. and others by Deed dated the 22<sup>nd</sup>

day of November 1866, and recorded among  
said land records in Liber J. H. L. N<sup>o</sup> 53 folio  
37<sup>3</sup> &c, and all of which was included in  
the sale made to said William Gilmer by the  
~~Trustee under a deed~~ under the proceeding  
for the foreclosure of said Mortgage, and  
finally ratified on the 8<sup>th</sup> day of January  
1873 by the Circuit Court for Baltimore County  
in a cause of William Gilmer vs Robert  
Gilmer &c.

Together with all rights, ways, easements  
and appurtenances unto the same appertaining.

Also the right of way and use for the  
purpose of laying and maintaining and  
removing at pleasure a line of water pipe  
across and under another part of said  
whole tract so conveyed by Charles S.  
Gilmer and others, ~~as aforesaid~~, from  
the place where the last cause of the land  
above conveyed crosses the pipe line  
for the water supply, known as the Temporary  
Water Supply for the City of Baltimore, a point  
at a distance of 1347 feet in said cause,  
and running thence for said pipe line  
and right of way and use South sixty  
nine and a half degrees West and  
thousand and two feet to the lands of  
Balthus Gasley.



To Have and To Hold the said tract  
of land and the said right of way to the  
party of the first part, its successors and  
assigns forever.

And the said William Kilmer and  
Robert Kilmer Jr. respectively covenant to  
warrant specially the property hereby  
conveyed, and also to warrant against  
the operation and effect of any mortgage  
hereinafter executed by the said Charles S.  
Kilmer Trustee; And also that they will  
execute and deliver all such other  
and further assurances as may be  
reasonably devised or required to  
confirm the estate hereby conveyed.  
Witness the hands and seals of the said  
parties of the first, second and third  
parts.

Witness  
Geo. McCaffrey

Wm. Kilmer  
Robt. Kilmer  
William A. Fisher

Sd  
Sd  
Sd

State of Maryland,

City of Baltimore Set.

I do hereby certify that on this Twentieth sixth  
day of June A.D. 1873 before the Subscri-  
ber, a Justice of the Peace of the State of  
Maryland in and for the City of Baltimore  
personally appeared William Kilmer,

STATE OF MARYLAND, BALTIMORE CITY, Sct.

I HEREBY CERTIFY, That

*Geo. McCaffrey*  
Esquire, before whom the annexed acknowledgment

was made, and who has thereto subscribed his name, was, at the time of so doing, a Justice of the Peace of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, this *2<sup>d</sup>* day of *July* A. D. 187*3*

*Geo Robinson*

Clerk of the Superior Court of Baltimore City.

Robert Gilmer Jr and William D. A. Fisher and  
severally acknowledged the foregoing Instru-  
-ment to be their respective act and deed.

Wm. McCaffrey &

~~2075~~  
2125 244

Deed

William Wilmer  
and others

to

The Mayor and City  
Council of Baltimore

Deed for Record on

the 3. day of July

AD 1873

Same day recorded

in Liber 2466 p 81

pages 474 & one of

the said Records

of Baltimore

and Maryland

Witness My City

Notary

Albion 2 No. 1

\$3.00



# PETIT JURY

September Term, 1914.

- |    |    |                                   |                   |
|----|----|-----------------------------------|-------------------|
| 8  | 1  | W. Wilson White,                  | 1st District      |
| 9  | 2  | George B. Brown,                  | 1st               |
| 10 | 3  | Edward Coolahan,                  | 2nd "             |
|    | 4  | <del>Isaac H. Brook, Jr.</del>    | <del>2nd "</del>  |
| 11 | 5  | Albert S. Watts,                  | 3rd "             |
| 12 | 6  | John T. McGuire,                  | 3rd "             |
|    | 7  | <del>Vachel Buckingham,</del>     | <del>4th "</del>  |
| ✓  | 8  | George W. Buckman,                | 4th               |
| ✓  | 9  | Samuel A. Brooks,                 | 5th "             |
|    | 10 | <del>William T. Bull,</del>       | <del>6th "</del>  |
|    | 11 | <del>George R. Shaffers,</del>    | <del>6th "</del>  |
|    | 12 | <del>William Parker,</del>        | <del>7th "</del>  |
| 3  | 13 | William N. Foster,                | 7th "             |
| 4  | 14 | Levi Justice,                     | 8th "             |
|    | 15 | <del>Patrick McGuire,</del>       | <del>8th "</del>  |
| 5  | 16 | James R. Gordon,                  | 9th "             |
|    | 17 | <del>William Hannemann,</del>     | <del>9th "</del>  |
|    | 18 | <del>Gregory M. Mullen,</del>     | <del>9th "</del>  |
|    | 19 | <del>Harry W. Dork,</del>         | <del>10th "</del> |
|    | 20 | <del>Wilbur F. Hartley,</del>     | <del>11th "</del> |
|    | 21 | <del>Charles S. Rampley,</del>    | <del>11th "</del> |
|    | 22 | <del>Dr. A. Shelman Warner,</del> | <del>12th "</del> |
| 6  | 23 | Jacob H. Rhinehart,               | 13th "            |
|    | 24 | <del>Eugene Bishop,</del>         | <del>14th "</del> |
| 7  | 25 | George W. Richmond,               | 15th "            |

Mayor & City Council  
of Gallo  
Brack

15  
\*\*\*\*\*  
In the Circuit Court for Balti-  
more County, At Law.  
\*\*\*\*\*

\*\*\*\*\*  
Mayor and City Council of Bal-  
thore,  
a municipal corporation,  
vs.  
\*\*\*\*\*

Henry L. Brack and  
Emma Brack, his wife.  
\*\*\*\*\*

AMENDED PETITION  
and  
PETITION FOR LEAVE TO FILE  
AND ORDER.

Mr. Clerk:-  
\*\*\*\*\*  
\$32.  
\*\*\*\*\*

Please file.

*W. S. Field*  
Solicitor for Petitioner.

\*\*\*\*\*  
Service of copy admitted  
this 19 day of January 1914  
\*\*\*\*\*  
*Wm. S. Field*

Atty. for opds.  
J. S. G.  
Filed & serving Jan 19 1914

Mayor and City Council  
of Baltimore,  
a municipal corporation,

vs.

Henry L. Brack and  
Emma Brack, his wife.

:  
In the Circuit Court  
:  
for  
:  
Baltimore County,  
:  
At Law.  
:

--- ---

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of the Mayor and City Council of Baltimore,  
a municipal corporation, respectfully shows:

1. That the Mayor and City Council of Baltimore has  
filed its Petition herein under the Act of 1912, Chapter 117, for  
the condemnation of certain property therein described belonging  
to the defendants, for the purposes of the increased and improved  
water supply authorized by the Act of 1908, Chapter 214; that the  
defendant has answered said Petition and, among other defenses,  
has set up that "it is not necessary for the Mayor and City Council  
of Baltimore to acquire said land for the purposes set forth in said  
Petition, and neither said land, nor any part thereof, is needed for  
such purpose by said Mayor and City Council of Baltimore".


2. Your petitioner now shows that while it has the right  
to condemn all the property mentioned in said Petition, for the pur-  
pose of acquiring land to protect the water-shed that will drain into  
the new lake or reservoir to be formed by the dam now being built, it  
is not necessary to have all of the land, in the sense that all will  
be flooded by said lake; that only a portion of the whole property  
of said defendants, mentioned in the original Petition, will be  
actually flooded by the new lake, and that it is only necessary in  
order to make ample provision for the part that will be flooded to

acquire about 43.9 acres, instead of about 170 acres, mentioned in the original Petition.

3. That by amending the Petition and taking only 43.9 acres, above mentioned, the petitioner will not take the improvements on the property, and the petitioner is willing to take only the 43.9 acres, leaving the balance of the land and the improvements undisturbed.

WHEREFORE, your petitioner prays leave of the Court to amend its Petition heretofore filed in this case by filing the Amended Petition hereto attached, and that the defendants may be required to answer said Amended Petition within a reasonable time after service of a copy thereof upon said defendants, or their solicitor.

A N D, as in duty, &c.

  
Solicitor for Petitioner.

STATE OF MARYLAND, :  
CITY OF BALTIMORE, : TO WIT:

I HEREBY CERTIFY That, on this *Fifteenth* day of January, in the year 1914, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Ezra B. Whitman, Water Engineer of Baltimore City, and, on behalf of the petitioner, made oath in due



form of law that the matters and facts stated in the foregoing  
Petition are true, to the best of his knowledge, information and  
belief.

AS WITNESS my hand and Notarial Seal.

Jerrell S. Santry  
Notary Public.

Upon the foregoing Petition and Affidavit, it is ORDERED  
by the Circuit Court for Baltimore County, At Law, that leave be  
and the same is hereby granted to the petitioner to file the Amended  
Petition hereto annexed, and that the defendants answer said Amended  
Petition within Ten (10) days after service of a copy of this  
Petition and Order and of said Amended Petition upon the defendants,  
or their solicitor.

Edward J. O'Connell

MAYOR AND CITY COUNCIL OF BALTIMORE,  
A Municipal Corporation

vs.

Henry L. Brack and  
Emma Brack, his wife.

IN THE

CIRCUIT COURT

FOR BALTIMORE COUNTY,

AT LAW.

STATE OF MARYLAND, }  
Baltimore County, } to wit :

*To the Honorable, the Judge of said Court :*

**amended**

The petition of the Mayor and City Council of Baltimore, a municipal corporation, duly chartered under the laws of the State of Maryland, respectfully represents unto this Honorable Court :

1. That the Mayor and City Council of Baltimore is authorized by law to acquire, by purchase or condemnation, in fee simple, any land, property or thing, or any interest, franchise, easement, right or privilege therein, which may be required to establish and maintain a reservoir or lake in the valley or basin of the Gunpowder River, in Baltimore County, and its dependencies, for the purpose of augmenting and improving the municipal water supply of Baltimore City, or for any of the purposes expressed, mentioned or set forth in Chapter 214 of the Acts of the General Assembly of Maryland, passed at its Session of the year 1908, or for the purpose of introducing water into the City of Baltimore, or for any like or similar purpose.

2. That pursuant to and in execution of the power and authority vested in the Mayor and City Council of Baltimore, and in the municipal officials who have charge of the general municipal water supply of Baltimore City, it and they have determined it to be necessary and proper, and it is in fact necessary and proper to acquire in fee simple, for the purposes hereinbefore mentioned and referred to, and the Mayor and City Council of Baltimore doth require for the purposes aforesaid all that lot or parcel of ground and premises hereinafter more particularly described and mentioned, and all and every the right, title, interest and estate of the parties defendant hereto or either of them, in and to the same, that is to say, all that lot or parcel of ground and premises, situate, lying and being in the valley or basin of the Gunpowder River, in Baltimore County, or its dependencies aforesaid, and described as follows :

BEGINNING for the same at a hub in a fence corner, said hub being at the end of the south 39° 35' east 2685.16' line of the whole Brack tract, and being also at the end of the south 39° 15' east 412.5' line of a tract of land now or formerly owned by Helen M. Ridgely, thence leaving said Ridgely land and running through H. L. Brack's land, the four courses and distances next following: north 17° 15' east 270.0'; north 65° 00' east 520.0'; north 38° 30' east 400.0' and south 82° 55' east 1192.0' to a stone marked W.B at the beginning of the north 0° 49' west 269.22' line of the whole Brack tract, and being also at the end of the south 29° 45' east 229.0' line of a tract of land, as described in a deed from George H. Boyland and wife to the Mayor and City Council of Baltimore City, dated October 10th, 1887, and recorded among the Land Records of Baltimore County in Liber J.W.S. No. 162, folio 234; thence binding on said Mayor and City Council's land north 0° 49' west 269.22' to a stone; north 47° 22' east 220.13' to a stone marked W.B., south 88° 17' west 186.10' to a stone; north 43° 14' west 253.0' to a hub; south 89° 37' west 337.05' to a stone; north 48° 26' west 480.09' to a hub; north 40° 41' west 388.0' to a stone marked W.B., said stone being the beginning of the aforesaid tract of land conveyed to the Mayor and City Council of Baltimore City by George H. Boyland and wife, and also being at the end of the south 42° east 1576.0' line of a tract of land conveyed to the Mayor and City Council of Baltimore City by George Gilmor, et al., by deed recorded among the Land Records of Baltimore County in Liber W.M.I. No. 121, folio 505; thence binding on said course reversely north 40° 41' west 205.0' to a hub; thence leaving said line and running through H. L. Brack's property the three courses and distances next following: south 73° 59' west 505.00'; south 29° 31' east 538.0' and south 41° 44' west 1275.0' to a point in the south 39° 35' east

2685.16' line of the whole Brack tract, said point being also on the boundary of the land now or formerly owned by Otho E. and Henrietta S. Ridgely; thence binding on said south 39° 35' east 2685.16' line, south 39° 35' east 598.0' to the place of beginning; containing 43.9 acres of land, more or less.

The above described parcel of land being part of a tract of land conveyed to Henry L. Brack by Eben B. Hunting and Laura S. Hunting, his wife, by deed dated August 10th, 1891, and recorded among the Land Records of Baltimore County in Liber J.W.S. No. 187, folio 522.

Bearings given in this description are based upon a magnetic observation taken at the Loch Raven Dam in the year 1905.



3 1/2 Said property to be condemned however subject to the reservation in behalf of the said Henry L. Brack, his heirs or assigns, owners of the property of which the portion sought to be condemned is a part, or owners of any part thereof, to have access to Peterson's Run between the road leading from the house to Dulaney's Valley Pike and the division line between the Hampton Estate and the property of Henry L. Brack, for all domestic purposes including the cutting of ice, and including the right to have live stock run to and water in said portion of said Run; no hogs however to be permitted to have access to said stream; ~~and this reservation to be used in a reasonable manner so as not to cause any unnecessary pollution of said stream;~~ and subject also to the obligation upon the part of the Mayor and City Council of Baltimore to construct a suitable bridge over said Peterson's Run and a suitable Road from each side of said bridge to the outline of the property sought to be condemned along the line of the present road and equally as good as the present road and bridge and at a sufficient elevation to furnish a safe and solid roadway from the defendants' land on the east of the property hereby condemned to the <sup>Defendants</sup> ~~plaintiff's~~ land on

the west of the property hereby condemned, said road to be constructed to be not less than 20 feet wide on the surface, and to be for the use and benefit as a road, perpetually, of the said Henry L. Brack ~~or~~ his heirs and assigns, owners of the remaining land of which the land taken is a part or any part thereof, he or they maintaining the same.

Filed Sept 29 1914

Together with the improvements thereupon and all the rights, ways, waters, water courses, easements, privileges, advantages and appurtenances thereto belonging or in any wise appertaining, and also all the right, title, interest and estate of the parties defendant hereto and each of them, in and to the bed of any and every road, street, avenue, lane or alley binding on, adjoining or running through the said property, and all riparian and aquatic rights of the parties defendant hereto and each of them, as owner or owners, of said property.

That for the purpose of further description, explanation and convenience, the petitioner herein files herewith as part hereof, a plat, indicating the outlines of said property above described <sup>by solid white lines</sup> marked "Petitioner's ~~Exhibit~~ Amended Petition".

3. That the right, title, interest and estate of the parties hereto, in and to the property hereinbefore more particularly described and hereby sought to be condemned, is as follows, that is to say :

**The fee simple interest therein is vested in the defendant Henry L. Brack, and the defendant Emma Brack has an interest therein by virtue of being the wife of said Henry L. Brack.**

4. That the Mayor and City Council of Baltimore and its proper municipal officers are unable to agree with the owner or owners of said above described property upon a price to be obtained therefor, and it is therefore necessary that said property with all improvements thereon and the rights and appurtenances aforesaid and the interest of the owner or owners therein shall be acquired by condemnation, and your petitioner accordingly desires to acquire the same by condemnation. Wherefore this proceeding is brought.

Your petitioner therefore prays that this Honorable Court will have said parcel of land particularly described in the foregoing petition, with all improvements thereon and all rights and appurtenances in any wise appertaining thereto as described and mentioned in said petition, and every interest therein, condemned, in fee simple, for the purposes hereinbefore mentioned, in accordance with the requisites of the law in such cases made and provided, the procedure to be that prescribed by Chapter 117 of the Acts of the General Assembly of Maryland, passed at its Session of the year 1912.

And as in duty bound, etc.



Attorney for the Mayor and City Council of Baltimore.

~~I hereby authorize and approve the institution of the above proceeding.~~

~~Mayor of Baltimore.~~



*T. Scott Offutt*  
*Attorney at Law*  
*Towson Md.*

Dear Mike:

Will you see that the inclosed motions in  
arrest of judgment are filed in the several cases in which they  
are entitled and , oblige,

Yours very truly

To,

Michael F. Connor Esq.,

Towson Md.



June 29th 1913

T. SCOTT OFFUTT  
ATTORNEY-AT-LAW  
TOWSON, MD.



William P. Lee

Clerk of the Circuit

Towson, Md.

Mr. Conner

John W. C. Court  
Baltimore County  
at law.

John W. C. Court  
Baltimore.

Henry L. Black  
and

Emma Black  
his wife

Charles & William.

Wm. C. & George

John W. C. Court  
Baltimore & Offenders.

Filed Oct. 3rd 1912

OGDEN & OGDEN  
ATTORNEYS-AT-LAW  
723 GAITHER BUILDING  
BALTIMORE, MD.

Henry L. Brack, and Emma Brack,  
his wife.

:  
 : In the  
 :  
 : Circuit Court  
 :  
 : for Baltimore County.  
 :  
 : At Law

— — — — — 00000 — — — — —

The joint and several answer of Henry L. Brack and Emma Brack, his wife, to the petition of the Mayor and City Council of Baltimore in this Court filed, as cause why the land described in the petition should not be condemned in this proceedings.

To the Honorable, the Judges of said Court:

Henry L. Brack and Emma Brack, his wife, defendants and respondents in the above entitled proceeding not waiving or any wise abandoning, but reserving to them and each of them, jointly and severally all manner of benefit exception or exceptions, objection or objections to the manifold and manifest errors, imperfections and deficiencies in said petition, and said proceeding, and to the jurisdiction of this Honorable Court in the premises, nevertheless, jointly and severally answering said petition says:

FIRST.

Because it is not necessary for the Mayor and City Council of Baltimore to acquire said land for the purposes set forth in said petition, and neither said land or any part thereof is needed for such purposes by said Mayor and City Council of Baltimore.

SECOND.

Answering the third paragraph of said petition, they say they are the owners of the property therein described.

THIRD.

Answering the fourth paragraph, the defendants say, they deny that the Mayor and City Council of Baltimore are unable to agree with the owners of said property upon the price therefore, but say no effort has been made in good faith by said Mayor and City Council of Baltimore to agree upon a price for said land, and the damage resulting to them, the said owners, from taking such land, and they say it is not necessary that said property, with all improvements thereon, and the



rights and appurtenances thereto belonging, and the interest of the owner or owners therein shall be acquired by condemnation.

FOURTH.

The defendants deny the right of the Mayor and City Council of Baltimore to acquire in this proceeding by condemnation or by whatever name or procedure may be known, the property described in this petition or any part thereof for each of the following reasons, to wit:

1. Because not necessary for the Mayor and City Council of Baltimore to acquire said land for the purposes set forth in said petition.
2. Because said Mayor and City Council of Baltimore have made no effort in good faith to agree with the owners of said land upon a reasonable compensation to said owners for the use and occupation thereof by the said Mayor and City Council of Baltimore for the purpose set forth in said petition.
3. Because said Mayor and City Council of Baltimore have made no proper effort to agree with the owners of said land upon a price to be obtained therefore.
4. Because the supposed Act of General Assembly of Maryland of Session of 1912 is contrary to and violates the provisions of the Bill of Rights of Maryland, and the Constitution of Maryland in the following particulars:
  - (a) The said Act is not described in the title thereof.
  - (b) The said Act provides for the acquisition of private property for public use or purposes without just compensation therefore, as agreed upon by the parties or awarded by a Jury being first paid or tendered to the party or parties entitled to compensation.
  - (c) Because said Act imposes non-judicial functions on and reposes non-judicial powers in the Judges of the Circuit Court of the several counties of Maryland, and the Law Courts of the City of Baltimore, and in said Courts.
  - (d) Because said Act in its terms and provisions is so vague, uncertain, incomplete, confused, contradictory, deficient, doubtful, unintelligible and ineffectual as to be entirely and utterly nugatory, inoperative and unenforceable without the exercise of legislative power and authority by the Courts or judges before which the same may come for construction, administration or execution.
  - (e) Because it deprives the Defendants of their property without due process of

Law.

(f) Because of other reasons apparent on the face of said Act.

5. Because said supposed ~~XXXXX~~ Act is contrary to and violates the provisions of the Federal Constitution in that it provides for taking private property for public uses without due process of Law.

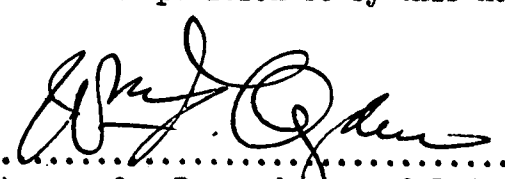
6. Because this proceeding constitutes, and is an attempt to deprive this respondents and defendants of their property without due process of Law in violation of the provisions of the Constitution of the United States.

7. Because said supposed Act of the General Assembly of Maryland violates the Constitution of the State of Maryland in that in its enactment the said General Assembly has sought to exercise and has exercised judicial powers and functions in fixing an arbitrary, illegal and unjust standard or measure of damages or price to be paid to the owner whose land or property is taken under it, contrary to the provisions of said constitution, and said Act is therefore null and void.

8. Because this proceeding constitutes and is an attempt to deprive the Defendants and respondents of their private property for public uses without just compensation without due process of law in violation of the provisions of the Constitution of the United States.

9. That as citizens of the United States and the State of Maryland, they are entitled to all the privileges guaranteed to them as such by the Constitution of the United States, and the Constitution of the State of Maryland, and yet this proceeding at the instance of the Mayor and City Council of Baltimore constitutes and is an attempt to deprive the defendants and respondents of ~~the~~ <sup>their</sup> privileges and take from them rights and immunities guaranteed by the Constitution of Maryland by taking without due process of Law their private property for public purposes without just compensation therefore as agreed upon by the parties, or awarded by a jury to the owners of said property contrary to the provisions of the Constitution of the United States.

These respondents therefore pray that said petition be by this Honorable Court dismissed. ,

  
.....  
Attorney for Respondents and Defendants.

Mr. William P. Cole, Clerk:

The Respondents and Defendants pray a Jury Trial on the issues of fact made by the petition and answer in the above proceeding.

*Wm. J. Grier*  
.....  
Attorney for Respondents and Defendants.

Mayor & City Council  
of Baltimore

Harry L. Brock  
et al,

The Circuit  
Court for  
Baltimore  
County  
Continuation

To the Hon the Judge of said Court  
The defendants move  
the Court that the amendment  
of the plaintiff, offered to be filed  
by the said plaintiff, as per  
graph. 3<sup>rd</sup> of the amended  
petition be not received  
because:

- (1) The reservations pro-  
posed to be reserved to the  
landowner are too uncertain  
and vague to be capable  
of legal ascertainment or  
definition.
- (2) That said amendment contra-  
dicts other paragraphs  
of said petition and is  
inconsistent therewith.
- (3) That said amendment  
is offered too late



Motion recapitulation

Filed Sept 29 1914

It is that our amendment is not germane to the issue upon which the query is this case was made. That our amendment is made after the query is made our case has been made.

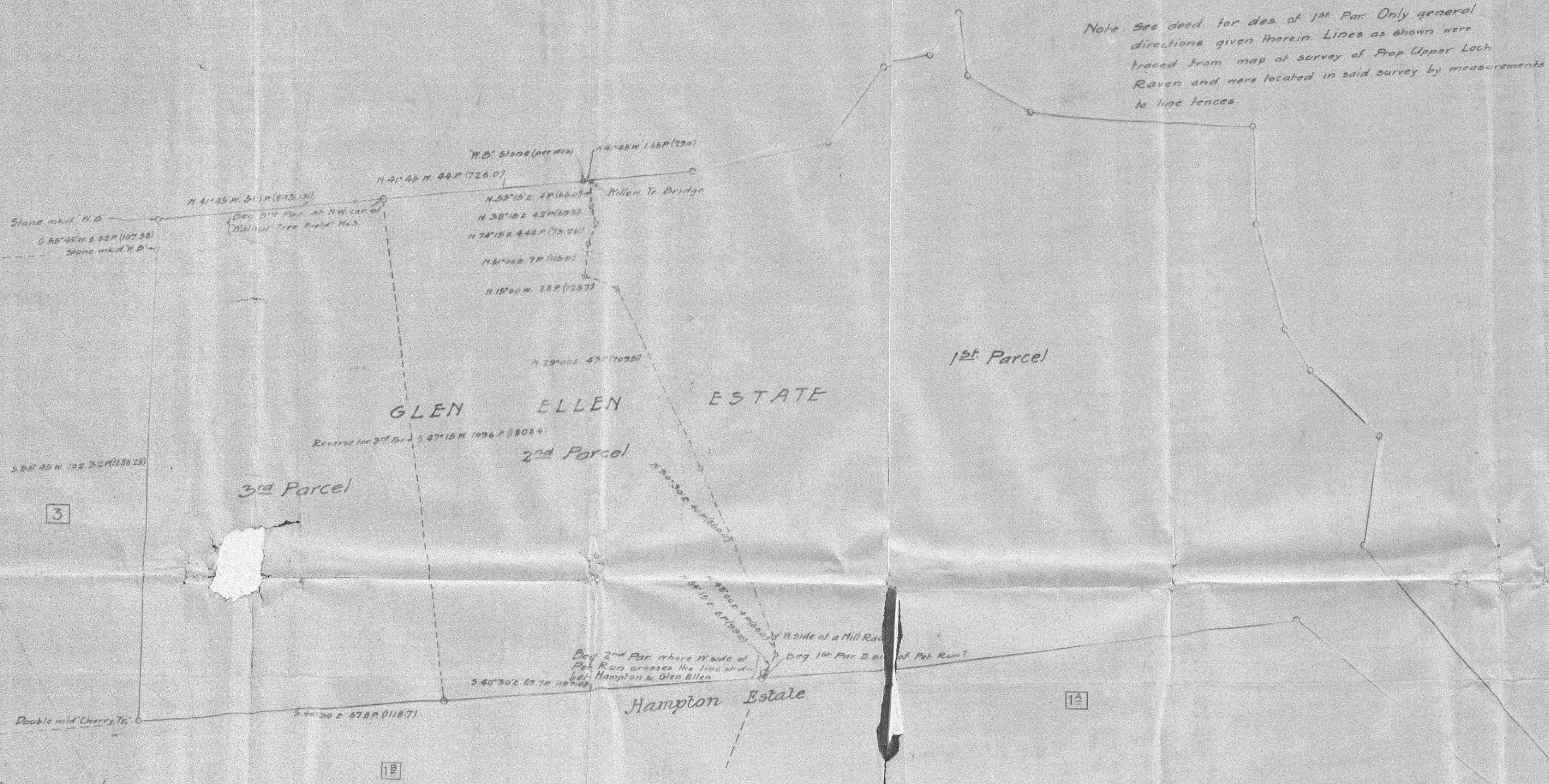
Prof. Green

~~Prof. Green~~

Very for district  
San Francisco



40-C-4



EBEN B. HUNTING & W<sup>fe</sup>  
Deed to  
HENRY L. BRACK

Aug. 1891 - J.W. 5187-522 - Cont- 1<sup>st</sup> Par 9275A-2<sup>nd</sup> Par 44A-16P  
3<sup>rd</sup> Par 40A-1R-17P

PROPERTY PLAT  
PROPOSED UPPER LOCH RAVEN (2)  
SCALE: 1"=300'



Mayor City Council  
of Baltimore

Henry L. Brack  
Embr " Justice

Exhibit No 1

Filed 7<sup>th</sup> May 1912

Filed 7<sup>th</sup> May 1912



Mayor and City Council  
of Baltimore  
vs.

In the  
Circuit Court for Baltimore  
County.

Henry L. Brack, and  
Emma Brack, his wife.

At Law.

To the Honorable, The Chief and Associate Judges of said Court

The defendants, Henry L. Brack and Emma Brack, his wife, by William J. Ogden their attorney, respectfully represent unto your Honor, —

That one of the Defendants, Henry L. Brack, has been returned non est twice successively upon summons issued for him in the above entitled case, and that on August 21<sup>st</sup> 1912 by order of this Honorable Court the said Henry L. Brack was given notice by publication of the said order, once a week for four successive weeks in a paper published in Baltimore County, and also in one daily paper published in the City of Baltimore requiring the said Henry L. Brack to appear in the Circuit Court for Baltimore County at Law, on or before the 23<sup>rd</sup> day of September 1912, and show cause, if any he has, why the said property should not be condemned as prayed in the petition.

That on Saturday, the 21<sup>st</sup> of September, the said Defendants,



Henry L. Brack, who had been for a part of the time absent from the State, retained the said William J. Ogden as his attorney to represent himself and Emma Brack, his wife in these proceedings.

That the said William J. Ogden has filed his appearance in the case and respectfully moves the Court to grant the Defendants an extension of time in which to file their answer to the Petition.

And as in duty bound the

Wm J. Ogden

Atty for Defendants.

September 23<sup>rd</sup> 1912

Upon the agreement of Counsel for the petitioner it is ordered that the time for the defendants to file their answer to the petition is extended ten days from this date.

Charles R. R. R.

The Circuit Court of  
Baltimore County

The Mayor and City Council  
of Baltimore -

vs,

Henry L. Brack and  
Emma Brack, his  
wife

Motion and  
Order extending time for  
depositions & file answers

Wm. Clark

Deputy Clerk  
Wm. H. Green  
Attorney for Defendants

Filed Sept 23 1912

Baltimore County, to wit:

## THE STATE OF MARYLAND.

To the Sheriff of Baltimore County.....Greeting:

You are hereby commanded to summon.....

.....*Henry L Brack*..........  
of Baltimore County, to appear before the Judges of the Circuit  
Court for Baltimore County, to be held at the Court House, at  
Towsontown, in and for the same county, on the.....*third*.....~~MONDAY~~ OF.....*September*.....191*2*.....to answer ~~in~~.....*Condemnation proceeding*.....  
at the suit of.....*Mayor & City Council*.....  
.....*of Baltimore*.....

and have you then and there this writ.

WITNESS, the Honorable N. CHARLES BURKE, Chief Judge of the Third Judicial Circuit of  
Maryland, the.....*20*.....day of.....*May*.....in the year  
of our Lord one thousand nine hundred and.....*twelve*.....Issued the.....*21*.....day of.....*Aug*.....191*2*..........*Wm P Cole*.....

Clerk of the Circuit Court for Baltimore County.

No.....

Walter H. H. ....

Conrad J. Ballman

VS.

Henry L. Black

.....

SUMMONS FOR DEFENDANT

Now let. Copy of order summon.  
(and copy of writ of habeas corpus,  
partially signed by the court, this  
3rd day of September 1912

Michael J. G. ....  
Sheriff.

Filed ... 6 ... day Sept - 1912

J. J. Field

Plaintiff's Attorney.

The Jeffersonian Print.



Baltimore County, to wit:

## THE STATE OF MARYLAND.

To the Sheriff of Baltimore County.....Greeting:

You are hereby commanded to summon.....

.....*Henry L. Brack*..........  
of Baltimore County, to appear before the Judges of the Circuit  
Court for Baltimore County, to be held at the Court House, at  
Towsontown, in and for the same county, on the.. *Third*.....~~MONDAY~~ OF *September*.....191*2*.to answer ~~in~~ *Condemnation proceeding*.....at the suit of *Mayor and City Council*.....*of Baltimore*.....

and have you then and there this writ.

WITNESS, the Honorable N. CHARLES BURKE, Chief Judge of the Third Judicial Circuit of  
Maryland, the.....*20<sup>th</sup>*.....day of.....*May*.....in the year  
of our Lord one thousand nine hundred and *twelve*Issued the.....*14<sup>th</sup>*.....day of.....*August*.....191*2*..........*Wm P Cole*.....

Clerk of the Circuit Court for Baltimore County.

Condensation Docet no 1

No.....

Mayor Steig-Cornwall

of Baltimore

VS.

Henry & Brack

.....

SUMMONS FOR DEFENDANT

Now set

McClave & Co

Sheriff.

Filed .....

3rd day

Sept 1917

Edwards

Plaintiff's Attorney.

Mayor and City Council  
of Baltimore,

vs.

Henry L. Brack, and  
Emma Brack, his wife.

In the  
Circuit Court for Baltimore  
County.  
At Law.

-----

TO THE HONORABLE, THE CHIEF AND ASSOCIATE JUDGES OF SAID COURT:

The Petitioner, the Mayor and City Council of Baltimore,  
respectfully represents unto your Honor, -

That the original summons in the above entitled case was served upon the Defendant, Emma Brack, but that the said summons and three succeeding summons, have been successively returned non est as to the Defendant, Henry L. Brack.

That the law provides that, if any defendant is returned non est twice successively, the Court shall order the Sheriff to set up a copy of the summons for the Defendant upon the property and order a notice by publication.

Wherefore your Petitioner moves the Court for such order in this case.

Respectfully,

  
City Solicitor.





from the "Glen Ellen" mansion to the barn-yard buildings, thence running southeasterly bounding on said farm road and a field numbered thirteen on said Preuss' Plat to a point where said road crosses a stream that rises in "Locust Grove" tract and runs down into Peterson's Run by the quarter and dairy, as the latter was before it was burned, thence running up and bounding on said stream southeasterly to the "Locust Grove" tract, a life estate in which was devised by the late Robert Gilmor to Meredith Gilmor, and to the east edge of the woods as marked on Preuss' Plat, thence running southwesterly bounding on said Locust Grove tract and the east edge of the woods numbered twenty on said Preuss' Plat to the line that divides said "Glen Ellen" Estate from the Hampton Estate, thence bounding on said line northwesterly to the beginning, containing about ninety-two and three quarter acres of land.

2. BEGINNING for the second of said parcels of land at a point where the west side of Peterson's Run intersects a line of division between the "Glen Ellen" Estate and the Hampton Estate, and running thence binding on the west side of said Run two courses and distances, viz: north eighty-four and a quarter degrees, east six perches; and north forty-eight degrees, east four perches, to the west side of a mill-race, thence binding on the west side of said mill-race the seven following courses and distances, viz: north thirty and a half degrees east forty perches; north twenty-nine degrees east forty-three perches; north fifteen degrees west seven and eight tenths perches; north sixty-one degrees east seven perches; north seventy-four and a quarter degrees east four and eleven twenty-fifth perches; north thirty-eight and a quarter degrees east four and two-tenths perches, and north fifty-five and a quarter degrees east four perches to intersect a line drawn south forty-one and three quarter degrees east from a stone marked W. B., corner of the land belonging to the Mayor and City Council of Baltimore, said stone being planted where was formerly located the Willow Tree Bridge,

thence reversing said line as so drawn and binding thereon north forty-one and three quarter degrees west one and nineteen twenty-fifth perches to said stone marked W. B.; thence still north forty-one and three quarter degrees west forty-four perches to the northeast corner of "Middle Field" numbered two as the same is so designated as Preuss' Plat of the "Glen Ellen" Estate; thence binding on line of division between said "Middle Field" numbered two and the land herein described south forty-seven and a quarter degrees west one hundred and nine and six tenths perches and to intersect the before mentioned line of division between the Hampton Estate and the "Glen Ellen" Estate and thence binding on said line of division south forty and a half degrees east sixty-nine and seven tenths to the place of beginning, containing forty-four acres and sixteen square perches of land, more or less, and designated as "Walnut Tree Field" No. 3 on Preuss' Plat of "Glen Ellen".

3. BEGINNING for the third of said parcels of land at the northwest corner of "Walnut Tree Field" No. 3, as the same is so designated on Preuss' Plat of "Glen Ellen", said point being located at the distance of forty-four perches north forty-one and three quarter degrees west from a stone marked W. B., a corner of the land belonging to the Mayor and City Council of Baltimore, and running thence north forty-one and three quarter degrees west fifty-one and one-tenth perches to a stone marked W. B.; thence north fifty-five and three quarter degrees west six and thirteen twenty-fifths perches to a stone marked W. B.; thence still south fifty-five and three quarter degrees west one hundred and two and eight twenty-fifth perches to a double wild cherry tree standing in the line of division between the "Hampton Estate" and the "Glen Ellen" Estate; thence binding on the said line of division south forty and a half degrees east sixty-seven and eight tenths perches to "Walnut Tree Field" No. 3, and thence binding on the line of division between said "Walnut Tree Field"

No. 3 and the land herein described north forty-seven and a quarter degrees east one hundred and nine and six-tenths perches to the place of beginning, containing forty acres one rood and seventeen square perches of land, more or less, and being designated as "Middle Field" No. 2 on Preuss' Plat of "Glen Ellen".

4. Also all that piece or parcel of ground situated in Baltimore County aforesaid, the same being the identical strip of land fifty feet wide reserved by Robert Gilmor unto himself, his heirs and assigns, out of a tract of land conveyed by said Gilmor and wife to one William A. Fisher by deed dated December 31, 1880, and recorded among the said Land Records in Liber W. M. I. No. 121, folio 443, &c., being the road or avenue leading out from "Glen Ellen" Estate to the Old York Road; the title to said last mentioned piece was acquired by the said Annabel Lee George from the said Robert Gilmore and wife by deed dated June 29/90 and recorded among the Land Records aforesaid in Liber J. W. S. No. 180, folio 467, &c.

And it appearing to the Court that the defendant, Henry L. Brack has been returned non est twice successively upon summons issued for him in the above entitled case, and directed to the Sheriff of Baltimore County, it is thereupon, this 21<sup>st</sup> day of August, 1912, ORDERED by the Circuit Court for Baltimore County At Law, that another summons be issued by the Clerk for the said Henry L. Brack, returnable on the 3rd day of September, 1912.

And it is further ORDERED that the Sheriff of Baltimore County set up a copy of said summons upon the property above described, and that notice be given to the said Henry L. Brack by publication of this order, once a week for four successive weeks in a paper published in Baltimore County, and also in one daily newspaper published in the City of Baltimore, requiring the said Henry L. Brack to appear in the Circuit Court for Baltimore County at Law, on or before

the ~~23rd~~ day of September, 1912, and show cause, if any he has, why the said property should not be condemned as prayed in the petition.

Frank J. Dineen



Mayor and City Council  
of Baltimore,

vs.

Henry L. Brack, and  
Emma Brack, his wife.

In the  
Circuit Court for Baltimore  
County.  
At Law.

Upon Motion of the Petitioner, by S. S. Field, City  
Solicitor, it appearing to the Court that Henry L. Brack, one of  
the defendants, has been returned non est to the former summons,  
It is ORDERED by the Court, this 14<sup>th</sup> day of August, 1912,  
that the summons be renewed for said Henry L. Brack, returnable  
the 3rd day of September, 1912.

And it is further ORDERED that said defendant be  
notified, by service of a copy of this Order upon him, that he  
will be required to answer the Petition within fifteen days after  
his appearance, or the return day to which he is summoned, which-  
ever shall occur first, and show cause, if any he has, why the  
property mentioned in the Petition should not be condemned as  
therein prayed.

True copy test  
Wm. P. Cole Clerk

Frank I. Duncan

In the Circuit Court for  
Baltimore County.  
At Law.

Mayor and City Council  
of Baltimore,

vs.

Henry L. Brack, and  
Emma Brack, his wife.

O R D E R.

Filed 14<sup>th</sup> Aug 1912

Mayor and City Council  
of Baltimore,

vs.

Henry L. Brack, and  
Emma Brack, his wife.

In the  
Circuit Court for Baltimore  
County.  
At Law.

---

Upon Motion of the Petitioner, by S. S. Field, City  
Solicitor, it appearing to the Court that Henry L. Brack, one of  
the defendants, has been returned non est to the former summons,  
It is ORDERED by the Court, this 14<sup>th</sup> day of August, 1912,  
that the summons be renewed for said Henry L. Brack, returnable  
the 3rd day of September, 1912.

And it is further ORDERED that said defendant be  
notified, by service of a copy of this Order upon him, that he  
will be required to answer the Petition within fifteen days after  
his appearance, or the return day to which he is summoned, which-  
ever shall occur first, and show cause, if any he has, why the  
property mentioned in the Petition should not be condemned as  
therein prayed.

Wm. J. Dineen

Baltimore County, to wit:

## THE STATE OF MARYLAND.

To the Sheriff of Baltimore County—Greeting:

You are hereby commanded to summon—

Henry L. Brack

of Baltimore County, to appear before the Judges of the Circuit Court for Baltimore County, to be held at the Court House, at Towsontown, in and for the same county, on the

Tenth ~~MONDAY~~ OF July 1912

to answer an action of Condemnation

at the suit of Mayor and City Council of  
Baltimore,

and have you then and there this writ.

WITNESS, the Honorable N. CHARLES BURKE, Chief Judge of the Third Judicial Circuit of Maryland, the 20<sup>th</sup> day of May in the year of our Lord one thousand nine hundred and twelve

• Issued the 29<sup>th</sup> day of July 1912  
Wm. P. Cole

Clerk of the Circuit Court for Baltimore County.



No. Con. Decret no 1

Mayor and City Council

of Baltimore

VS.

Henry R. Brack  
M. E.

SUMMONS FOR DEFENDANT

Wm. Lee  
M. Lee  
Sheriff.

Filed 16 day July 1912

J. J. Fick

Plaintiff's Attorney.

\*\*\*\*\*  
IN THE CIRCUIT COURT FOR BAL-  
TIMORE COUNTY AT LAW.  
\*\*\*\*\*

Mayor and City Council of  
Baltimore,

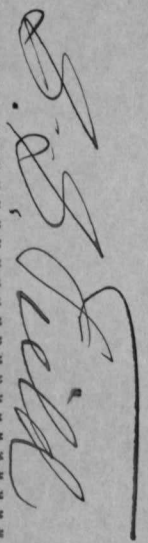
vs.

Henry L. Brack, and  
Emma Brack, his wife.  
\*\*\*\*\*

\*\*\*\*\*  
O R D E R  
\*\*\*\*\*

\*\*\*\*\*  
Mr. Clerk:-  
\*\*\*\*\*

Please file.

\*\*\*\*\*  
  
\*\*\*\*\*

Filed 16<sup>th</sup> July 1912

Mayor and City Council  
of Baltimore,

vs.

Henry L. Brack, and  
Emma Brack, his wife.

In the  
Circuit Court for  
Baltimore County.  
At Law.

-----

Upon Motion of the Petitioner, by S. S. Field, City Solicitor, it appearing to the Court that Henry L. Brack, one of the defendants, has been returned non est to the former summons, It is ORDERED by the Court, this 16th day of July, 1912, that the summons be renewed for said Henry L. Brack, returnable the 31st day of July, 1912.

And it is further ORDERED that said defendant be notified, by service of a copy of this Order upon him, that he will be required to answer the Petition within fifteen days after his appearance, or the return day to which he is summoned, whichever shall occur first, and show cause, if any he has, why the property mentioned in the Petition should not be condemned as therein prayed.

  
-----

No. \_\_\_\_\_

Mayor and City Council  
of Baltimore

VS.

Henry L. Brack

SUMMONS FOR DEFENDANT

Now est.  
Michael J. Goff  
Sheriff.

Filed 26 day June 1912

S. S. Fries & E. J. Coon  
Plaintiff's Attorney.



Baltimore County, to wit:

## THE STATE OF MARYLAND.

To the Sheriff of Baltimore County

*City*

Greeting:

You are hereby commanded to summon

*Henry A. Black*

of Baltimore County, to appear before the Judges of the Circuit Court for Baltimore County, to be held at the Court House, at Townsontown, in and for the same county, on the 22<sup>nd</sup> ~~MONDAY~~ DAY OF June 1912 to answer at Bethesda at the suit of Wagner and City - because of Baltimore

and have you then and there this writ.

WITNESS, the Honorable N. CHARLES BURKE, Chief Judge of the Third Judicial Circuit of Maryland, the 20<sup>th</sup> day of May in the year of our Lord one thousand nine hundred and twelve

Issued the

11<sup>th</sup>

day of

June

1912

Wm J. Cole

Clerk of the Circuit Court for Baltimore County.

In the

Circuit Court of Bal-

timore County.

At Law.

The Mayor and City Council of  
Baltimore,  
a municipal corporation,

vs.

Henry L. Brack, et al.

ORDER TO RENEW SUMMONS.

Mr. Clerk:-

Please file.

*L. S. Field*  
City Solicitor,  
Attorney for Plaintiff.

*Filed 29<sup>th</sup> June 1912*

Mayer and City Council  
of Baltimore

vs.

Henry L. Brack, and  
Emma Brack, his wife.

In the  
Circuit Court for  
Baltimore County.  
At Law.

Upon Motion of the Petitioner, by S. S. Field, City Solicitor, it appearing to the Court that Henry L. Brack, one of the defendants, has been returned non est to the former summons,

It is ORDERED by the Court, this 29th day of June 1912, that the summons be renewed for said Henry L. Brack, returnable the 10th day of July 1912.

And it is further ORDERED that said defendant be notified, by service of a copy of this Order upon him, that he will be required to answer the Petition within fifteen days after his appearance, or the return day to which he is summoned, whichever shall occur first, and show cause, if any he has, why the property mentioned in the Petition should not be condemned as therein prayed.

*True copy*

*Wm H. Nailan*

*Test, Wm P Cole  
Clerk*

Mayor and City Council  
of Baltimore

vs.

Henry L. Brack, and  
Emma Brack, his wife.

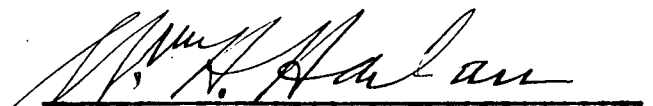
( In the  
)  
( Circuit Court for  
)  
( Baltimore County.  
)  
( At Law.  
)

-----

Upon Motion of the Petitioner, by S. S. Field, City Solicitor, it appearing to the Court that Henry L. Brack, one of the defendants, has been returned non est to the former summons,

It is ORDERED by the Court, this 29<sup>th</sup> day of June 1912, that the summons be renewed for said Henry L. Brack, returnable the 10th day of July 1912.

And it is further ORDERED that said defendant be notified, by service of a copy of this Order upon him, that he will be required to answer the Petition within fifteen days after his appearance, or the return day to which he is summoned, whichever shall occur first, and show cause, if any he has, why the property mentioned in the Petition should not be condemned as therein prayed.

  
\_\_\_\_\_



Mayor and City Council of  
Baltimore,

vs.

Henry L. Brack, and  
Emma Brack, his wife.

) In the Circuit Court for  
(  
)  
(  
) Baltimore County.  
(  
)

) At Law.  
(  
)

-----

Upon Motion of the Petitioner, by S.S. Field, its  
City Solicitor, it appearing to the Court that Henry L. Brack,  
one of the defendants, has been returned non est to the former  
summons, It Is Ordered by the Court, this 11th day of June, 1912,  
that the summons be renewed for said Henry L. Brack, returnable  
the 22nd day of June, 1912.

And It Is Further Ordered That said defendant be noti-  
fied, by service of a copy of this Order upon him, that he will  
be required to answer the Petition within fifteen days after his  
appearance or the return day to which he is summoned, whichever  
shall first occur, and show cause, if any he has, why the property  
mentioned in the Petition should not be condemned as therein prayed.

Frank J. Duncan

*True copy*

*Testy Wm P Cole clerk*

In the Circuit Court for  
Baltimore County.  
At Law.

Mayor and City Council  
of Baltimore,

vs.

Henry L. Brack and  
Emma Brack, his wife.

O R D E R

Filed 11<sup>th</sup> June 1912

Mayor and City Council of  
Baltimore,

vs.

Henry L. Brack, and  
Emma Brack, his wife.

)  
(  
)  
(  
)  
(  
)

In the Circuit Court for

Baltimore County.

At Law.

-----

Upon Motion of the Petitioner, by S.S. Field, its  
City Solicitor, it appearing to the Court that Henry L. Brack,  
one of the defendants, has been returned non est to the former  
summons, It Is Ordered by the Court, this 11th day of June, 1912,  
that the summons be renewed for said Henry L. Brack, returnable  
the 22nd day of June, 1912.

And It Is Further Ordered That said defendant be noti-  
fied, by service of a copy of this Order upon him, that he will  
be required to answer the Petition within fifteen days after his  
appearance or the return day to which he is summoned, whichever  
shall first occur, and show cause, if any he has, why the property  
mentioned in the Petition should not be condemned as therein prayed.

Anna L. Duany

S. S. FIELD,  
CITY SOLICITOR  
ALEXANDER PRESTON,  
DEPUTY CITY SOLICITOR

## Department of Law,

Henry W. Weeks, Clerk

Court House  
Baltimore, Md.

FRANK DRISCOLL,  
ROBERT F. LEACH, JR.,  
BENJAMIN H. MCKINDLESS,  
ASSISTANT CITY SOLICITORS

June 10, 1912.

IN REPLY REFER TO FILE NO. \_\_\_\_\_

Mr. William P. Cole,  
Clerk, Circuit Court,  
Towson, Md.

Dear Sir:

Enclosed please find Order to renew the Summons against Henry L. Brack, he having been returned 'non est', also a copy of the Order to be sent with the Summons to be served upon Brack.

Please send the Summons and copy of the Order to the Sheriff of Baltimore City, as Brack is in the real estate business in the City, and, I think, should easily be caught here.


*By the Court*  
Please get this Order signed tomorrow, the 11th, and issue the Summons, as I have dated the Order, and oblige

Yours very truly,

*S. S. Field*  
City Solicitor.

S.S.F.  
K.H.D.  
(Enc.)



*Received*  
*1912 and copy left.*  
*Now est. Henry L. Greck.*  
*Michael J. Gabb.*  
*Frank the 9th day of May,*  


No. \_\_\_\_\_

*Mayor and City Council*  
*of Baltimore*

VS.

*Henry L. Brack*  
*vs.*

SUMMONS FOR DEFENDANT

*sd. copy left with Mrs*  
*Brack*

Sheriff.

Filed *24* day *May*, 191*2*

*S. S. Fried*

Plaintiff's Attorney.

Baltimore County, to wit:

# THE STATE OF MARYLAND.

To the Sheriff of Baltimore County Greeting:

You are hereby commanded to summon

*Henry D. Brack, and Emma Brack*  
*his wife*

of Baltimore County, to appear before the Judges of the Circuit Court for Baltimore County, to be held at the Court House, at Towson town, in and for the same county, on the

*4<sup>th</sup>* ~~MONDAY~~ DAY OF *June* 191*2*

to answer an *Action of Condemnation*  
at the suit of *The Mayor and City Council of Baltimore, a Municipal Corporation*

and have you then and there this writ.

WITNESS, the Honorable N. CHARLES BURKE, Chief Judge of the Third Judicial Circuit of

Maryland, the *4<sup>th</sup>* day of *March* in the year

of our Lord one thousand nine hundred and *twelve*

Issued the *8<sup>th</sup>* day of *May* 191*2*  
*Wm D. Cole*

Clerk of the Circuit Court for Baltimore County.

EZRA B. WHITMAN,  
WATER ENGINEER.

City of Baltimore  
Water Department

January 4th, 1912.

Mr. Henry L. Braak,  
Towson, Md.


Dear Sir:-

I beg to acknowledge receipt of your letter of December 30th, in regard to the erection of a barn, barrack and fencing on your farm near Loch Raven.

In regard to the acquiring of your property, the Water Board would like to secure it, even though they build the low dam, provided your property can be secured at a reasonable figure. I have seen a number of property owners in the Valley of the Gunpowder, and secured from them figures at which they are willing to sell their property, and I shall be very glad to see you at an early date, and find out from you what you will accept for your property.

I would advise you not to proceed with the erection of any new buildings, until you see whether it is possible for you and the Water Board to agree upon a figure for the sale of your property to the City.

Very truly yours,

  
Water Engineer.

EBW/LFW.

January 4/12

January 4th, 1912.

Mr. Henry D. Brack,

Towson, Md.

Dear Sir:-

I beg to acknowledge receipt of your letter

of the 1st inst. in relation to the

purchase of the land in the

Valley of the Susquehanna

and to advise you that the same

has been forwarded to the

proper authorities for their

consideration and I shall be

very glad to advise you of the

result of their action.

Very truly yours,

Wm. J. Brack.

Towson, Md.

Enclosed for you are

two copies of the report

of the survey of the

land in the Valley of

the Susquehanna.

Very truly yours,

Wm. J. Brack.

Towson, Md.



ERAZA B. WHITMAN,  
WATER ENGINEER

City of Baltimore  
Water Department

April 18th, 1912.

Mr. Henry L. Brack,

Towson, Maryland.

Dear Sir:--

You are hereby notified that the Mayor and City Council of Baltimore desire to acquire for the purpose of augmenting and improving the municipal water supply of Baltimore City, your property situated in Baltimore County, known as "Glen Ellen", and described in deed from Eben B. Hunting and Wife to Henry L. Brack, dated August 1891, and recorded among the land records of Baltimore County in liber J. W. S. 187 folio 522, containing 177 acres, more or less, and for which the said Mayor and City Council of Baltimore hereby offer \$150.00 per acre.

And you are hereby notified that unless an agreement of sale is reached between you and the Mayor and City Council of Baltimore on or before the 30th day of April 1912, the said Mayor and City Council of Baltimore will institute condemnation proceedings for the purpose of acquiring your interest in said property.

The Mayor and City Council of Baltimore.  
By

*E. B. Whitman*  
President Water Board of  
Baltimore City.

*Condemnation bill  
afforded April 8/12*

*Mr Whitman & Suddler  
called on Friday April 19/12*

*Regt Letter mailed on April 22/12 } Note date of letter above  
was recd April 23/12 } dated April 18/12  
Ultimatum to April 30/12 to agree to price of \$150. per acre*

April 1912.

Mr. J. H. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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[illegible]

[illegible]

[illegible]

#4  
April 18/12

MAYOR AND CITY COUNCIL

of Baltimore,

vs.

HENRY L. BRACK, and

EMMA BRACK, his wife.

\* IN THE CIRCUIT COURT

\* FOR

\* BALTIMORE COUNTY.

\*

\*

\*\*\*\*\*

Mr. Cole, Clerk:-

Please enter my appearance ~~for~~ with S.S. Field <sup>for</sup> for  
the plaintiff.



Attorney for Plaintiff..

IN THE CIRCUIT COURT FOR  
BALTIMORE COUNTY.

\*\*\*\*\*

MAYOR AND CITY COUNCIL  
OF BALTIMORE

VS.

HENRY L. BRACK and  
EMMA BRACK, his wife.


\*\*\*\*\*

ORDER TO ENTER APPEARANCE.

\*\*\*\*\*

Mr. Cole, Clerk:-

Please file,

  
Atty. for Plaintiff.

Filed May 10 1912  
\*\*\*\*\*



Mayor City Council  
of Baltimore  
- vs -  
Henry L. Brack  
Emma Brack  
his wife

In the  
Circuit Court  
for  
Baltimore County  
at Law

For replication and demurrer to  
defendants answer Petitioner says:  
For Replication to 1<sup>st</sup> answer

① It is necessary for the Petitioner  
to have the lands described in  
the petition for the purpose  
therein set forth.

② For Reply Demurrer to the 3<sup>rd</sup>  
paragraph of the Answer  
Petitioner says

The Third Paragraph of said  
answer is insufficient in  
law

③ And for demurrer to the Fourth  
Paragraph of the Answer  
The Petitioner says:

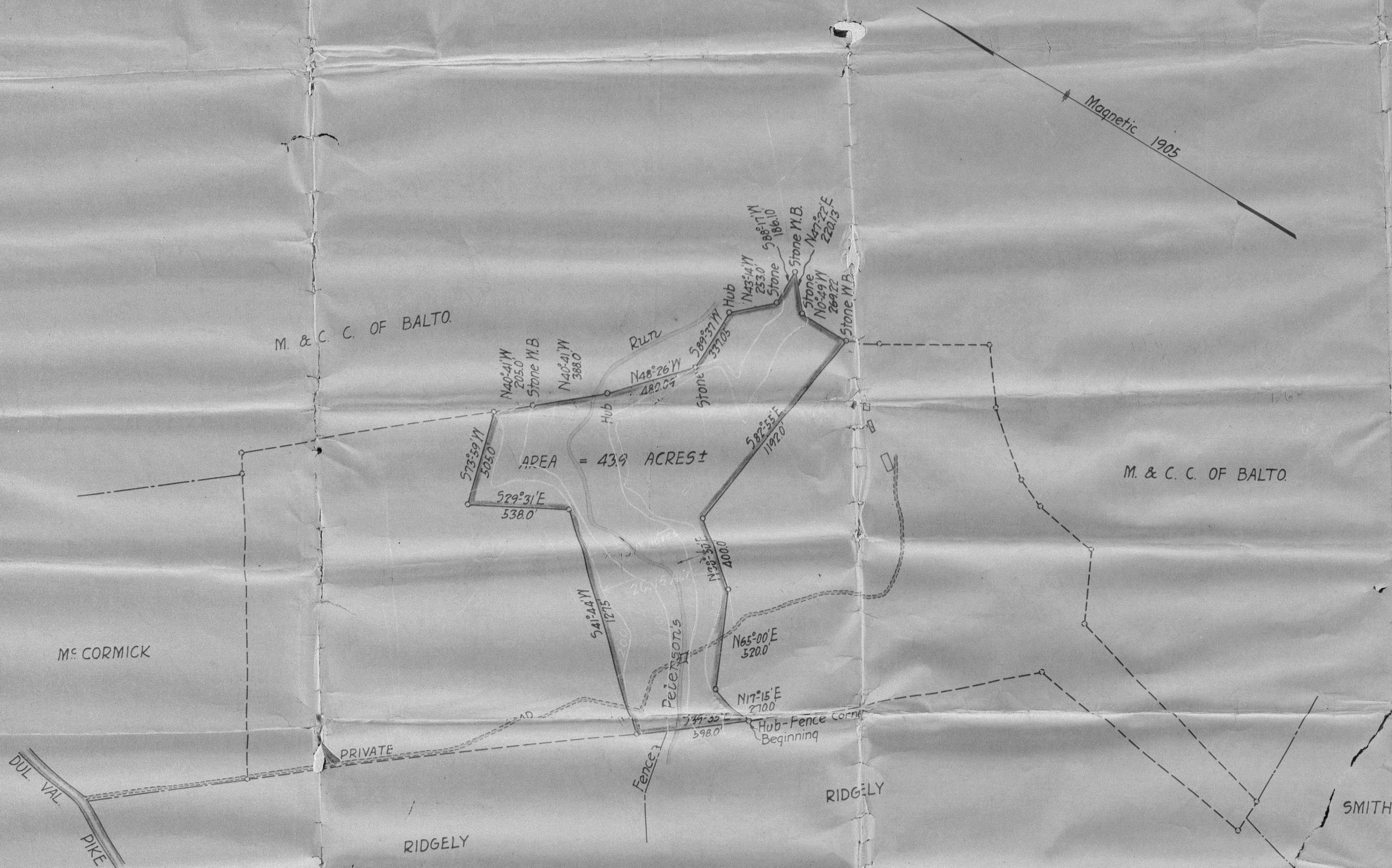
The Fourth Paragraph of the  
Answer is ~~not~~ insufficient  
in law.

S. S. Felt  
For Petitioner

In the  
Said Court  
for  
William Court  
at Law  
M.C.C.,  
on  
Breach  
Application  
of Remains

Filed Sept 28 1914





DRAWN G.L.H.  
 TRACED K.E.W.  
 CHECKED G.L.H.  
 CORRECT G.L.H.

**BALTIMORE CITY WATER DEPARTMENT - GUNPOWDER SUPPLY IMPROVEMENTS**  
**PART OF LOT NO. 2 - H. L. BRACK - PROPOSED TO BE ACQUIRED BY M. & C. C. - BALTO.**

SCALE - 1 INCH = 300 FEET  
 APPROVED G. J. Whitman WATER ENGINEER

SERIAL NO. 357  
 FILED 50-A-15  
 DATE Aug. 21, 1913

604-A-75



1865

In the Circuit Court for  
Baltimore County, At Law.

Mayor and City Council of

Baltimore,

vs.

Henry L. Brack, and

Emma Brack, his wife.

P E T I T I O N

Lt. Clerk:

Please file.

J. S. O'Neil  
Attorney for Petitioner.

Filed 10/11/65



MAYOR AND CITY COUNCIL OF BALTIMORE,  
A Municipal Corporation

vs.

Henry L. Brack and  
Emma Brack, his wife.

IN THE  
CIRCUIT COURT

FOR BALTIMORE COUNTY,

AT LAW.

STATE OF MARYLAND, }  
Baltimore County, } to wit:

*To the Honorable, the Judge of said Court:*

The petition of the Mayor and City Council of Baltimore, a municipal corporation, duly chartered under the laws of the State of Maryland, respectfully represents unto this Honorable Court:

1. That the Mayor and City Council of Baltimore is authorized by law to acquire, by purchase or condemnation, in fee simple, any land, property or thing, or any interest, franchise, easement, right or privilege therein, which may be required to establish and maintain a reservoir or lake in the valley or basin of the Gunpowder River, in Baltimore County, and its dependencies, for the purpose of augmenting and improving the municipal water supply of Baltimore City, or for any of the purposes expressed, mentioned or set forth in Chapter 214 of the Acts of the General Assembly of Maryland, passed at its Session of the year 1908, or for the purpose of introducing water into the City of Baltimore, or for any like or similar purpose.

2. That pursuant to and in execution of the power and authority vested in the Mayor and City Council of Baltimore, and in the municipal officials who have charge of the general municipal water supply of Baltimore City, it and they have determined it to be necessary and proper, and it is in fact necessary and proper to acquire in fee simple, for the purposes hereinbefore mentioned and referred to, and the Mayor and City Council of Baltimore doth require for the purposes aforesaid all <sup>those lots or parcels</sup> ~~that lot or parcel~~ of ground and premises hereinafter more particularly described and mentioned, and all and every the right, title, interest and estate of the parties defendant hereto or either of them, in and to the same, that is to say, all <sup>those lots</sup> ~~that lot or parcels~~ of ground and premises, situate, lying and being in the valley or basin of the Gunpowder River, in Baltimore County, or its dependencies aforesaid, and described as follows:

1. BEGINNING for the first of said parcels at the southeast corner of "Walnut Tree Field", numbered three on Preuss' Plat annexed to the deed from Ellen W. Gilmor and others to Harry Gilmor, bearing date the 11th day of August, 1875, and recorded among the Land Records of Baltimore County aforesaid in Liber J. B. No. 97, folio 297, &c., said point of beginning being where the east side of Peterson's Run crossed the line that divides said "Glen Ellen" Estate from the Hampton Estate, running thence northeasterly bounding on said "Walnut Tree Field" and also on the west side of said Peterson's Run to the race, still bounding on said "Walnut Tree Field" and the west side of said race northeasterly to the farm road leading to the Dulaney's Valley Turnpike and to the western side of Willow Tree Bridge, thence with said road southeasterly and easterly bounding on "Race Meadow", as numbered fourteen on Preuss's Plat, and until it intersects another farm road leading from the "Glen Ellen" mansion to the barn-yard buildings, thence running southeasterly bounding on said farm road and a field numbered thirteen on said Preuss' Plat to a point where said road crosses a stream that rises in "Locust Grove" tract and runs down into Peterson's Run by the quarter and dairy, as the latter was before it was burned, thence running up and bounding on said stream southeasterly to the "Locust Grove" tract, a life estate in which was devised by the late Robert Gilmor to Meredith Gilmor, and to the east edge of the woods as marked on Preuss' Plat, thence running southwesterly bounding on said Locust Grove tract and the east edge of the woods numbered twenty on said Preuss' Plat to the line that divides said "Glen Ellen" Estate from the Hampton Estate, thence bounding on said line northwesterly to the beginning, containing about ninety-two and three quarter acres of land.

2. BEGINNING for the second of said parcels of land at a point where the west side of Peterson's Run intersects a line of division between the "Glen Ellen" Estate and the Hampton Estate, and running thence binding on the west side of said Run two courses and distances, viz: north eighty-four and a quarter degrees <sup>east</sup> six perches; and north forty-eight degrees east four perches;

to the west side of a mill-race, thence binding on the west side of said mill-race the seven following courses and distances, viz: north thirty and a half degrees east forty perches; north twenty-nine degrees east forty-three perches; north fifteen degrees west seven and eight-tenths perches; north sixty-one degrees east seven perches; north seventy-four and a quarter degrees east four and eleven twenty-fifth perches; north thirty-eight and a quarter degrees east four and two-tenths perches, and north fifty-five and a quarter degrees east four perches to intersect a line drawn south forty-one and three quarter degrees east from a stone marked W. B., corner of the land belonging to the Mayor and City Council of Baltimore, said stone being planted where was formerly located the Willow Tree Bridge, thence reversing said line as so drawn and binding thereon north forty-one and three quarter degrees west one and nineteen twenty-fifth perches to said stone marked W. B.; thence still north forty-one and three quarter degrees west forty-four perches to the northeast corner of "Middle Field" numbered two as the same is so designated on Preuss' Plat of the "Glen Ellen" Estate; thence binding on line of division between said "Middle Field" numbered two and the land herein described south forty-seven and a quarter degrees west one hundred and nine and six tenths perches and to intersect the before mentioned line of division between the Hampton Estate and the "Glen Ellen" Estate and thence binding on said line of division south forty and a half degrees east sixty-nine and seven tenths perches to the place of beginning, containing forty-four acres and sixteen square perches of land, more or less, and designated as "Walnut Tree Field" No. 3 on Preuss' Plat of "Glen Ellen"

3. BEGINNING for the third of said parcels of land at the northwest corner of "Walnut Tree Field" No. 3, as the same is so designated on Preuss' Plat of "Glen Ellen", said point being located at the distance of forty-four perches north forty-one and three quarter degrees west from a stone marked W.B., a corner of the land belonging to the Mayor and City Council of Baltimore, and running thence north forty-one and three quarter degrees west fifty-one and one-tenth perches to a stone marked W. B.; thence north fifty-five and three quarter degrees west six and thirteen twenty-fifths perches to a stone

2, marked W. B.; thence still south fifty-five and three quarter degrees west One hundred and two and eight twenty-fifth perches to a double wild cherry tree standing in the line of division between the "Hampton Estate" and the "Glen Ellen" Estate; thence binding on the said line of division south forty and a half degrees east sixty-seven and eight tenths perches to "Walnut Tree Field" No. 3 and thence binding on the line of division between said "Walnut Tree Field" No. 3 and the land herein described north forty-seven and a quarter degrees east one hundred and nine and six-tenths perches to the place of beginning, containing forty acres one rood and seventeen square perches of land, more or less, and being designated as "Middle Field" No. 2 on Preuss' Plat of "Glen Ellen".

4. Also all that piece or parcel of ground situated in Baltimore County aforesaid, the same being the identical strip of land fifty feet wide reserved by Robert Gilmore unto himself, his heirs and assigns, out of a tract of land conveyed by said Gilmore and wife to one William A. Fisher by deed dated December 31, 1880, and recorded among the said Land Records in Liber W.M.I. No. 121, folio 443, &c., being the road or avenue leading out from "Glen Ellen" Estate to the Old York Road; the title to said last mentioned piece was acquired by the said Annabel Lee George from the said Robert Gilmore and wife by deed dated June 29/90 and recorded among the Land Records aforesaid in Liber J. W. S. No. 180, folio 467, &c.



Together with the improvements thereupon and all the rights, ways, waters, water courses, easements, privileges, advantages and appurtenances thereto belonging or in any wise appertaining, and also all the right, title, interest and estate of the parties defendant hereto and each of them, in and to the bed of any and every road, street, avenue, lane or alley binding on, adjoining or running through the said property, and all riparian and aquatic rights of the parties defendant hereto and each of them, as owner or owners of said property.

That for the purpose of further description, explanation and convenience, the petitioner herein files herewith as part hereof, a plat, indicating the outlines of said property above described, marked "Petitioner's Exhibit No. 1."

3. That the right, title, interest and estate of the parties hereto, in and to the property hereinbefore more particularly described and hereby sought to be condemned, is as follows, that is to say :

The fee simple interest in and to said property vested in said Henry L. Brack under and by virtue of a Deed, bearing date the 15th day of August 1891, and recorded among the Land Records of Baltimore County in Liber J.W.S. No. 187, folio 522, etc., from Eben B. Hunting and wife to said Henry L. Brack, and all and every other right, title, interest and estate vested in, possessed or enjoyed by said Henry L. Brack in and to said property, or any part or portion thereof.

The interest and estate of Emma Brack in and to said property, by virtue of being the wife of said Henry L. Brack, and all and every other right, title, interest and estate vested in, possessed or enjoyed by said Emma Brack in and to said property or any part or portion thereof.

4. That the Mayor and City Council of Baltimore and its proper municipal officers are unable to agree with the owner or owners of said above described property upon a price to be obtained therefor, and it is therefore necessary that said property with all improvements thereon and the rights and appurtenances aforesaid and the interest of the owner or owners therein shall be acquired by condemnation, and your petitioner accordingly desires to acquire the same by condemnation. Wherefore this proceeding is brought.

Your petitioner therefore prays that this Honorable Court will have said parcel of land particularly described in the foregoing petition, with all improvements thereon and all rights and appurtenances in any wise appertaining thereto as described and mentioned in said petition, and every interest therein, condemned, in fee simple, for the purposes hereinbefore mentioned, in accordance with the requisites of the law in such cases made and provided, the procedure to be that prescribed by Chapter 117 of the Acts of the General Assembly of Maryland, passed at its Session of the year 1912.

And as in duty bound, etc.

*S. S. Freick*

Attorney for the Mayor and City Council of Baltimore.

I hereby authorize and approve the institution of the above proceeding.

*James D. Preston*

Mayor of Baltimore.

Upon the foregoing petition, it is this 8<sup>th</sup> day of May 1912, by the Circuit Court for Baltimore County, sitting as a Court of Law, ordered that a summons issue for Henry L. Brack, adult, and Emma Brack, his wife, adult, both residing in Baltimore County, State of Maryland,

the owners and parties interested in the property mentioned in said petition; said summons to be served by the sheriff and to be returned on or before the 20<sup>th</sup> day of May 1912, requiring them and each of them to be and appear in this Court on or before the 4<sup>th</sup> day of June 1912, and show cause, if any they have why the said property shall not be lawfully condemned in fee simple, for the purposes set forth in said petition.

Wm. J. Dineen